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# Consolidated Laws of New York

## ANNOTATED

BOOK 8

CIVIL RIGHTS LAW

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# Consolidated Laws of New York
# Annotated

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# THE CONSOLIDATED LAWS OF NEW YORK ANNOTATED

The books of this edition are arranged and numbered as follows:

1. Report of Consolidators and Treatise on Statutes and Statutory Construction
2. Constitution of New York Annotated, Constitution of the United States, Declaration of Independence and Magna Charta
3. Agricultural
4. Banking
5. Benevolent Orders
6. Business Corporations
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65. Unconsolidated Laws
66. Complete Table of Laws Repealed
67. General Index

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# THE CONSOLIDATED LAWS OF NEW YORK, ANNOTATED

AS AMENDED TO THE CLOSE OF THE REGULAR SESSION OF THE LEGISLATURE OF 1916

Compiled under the Editorial Supervision of
WILLIAM M. McKINNEY

BOOK 8

Civil Rights Law

EDWARD THOMPSON COMPANY
Northport, New York
1916

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STATE OF NEW YORK
OFFICE OF THE SECRETARY OF STATE } *ss:*

In pursuance of the authority vested in me, by section 932 of the Code of Civil Procedure, I, Francis M. Hugo, Secretary of State, hereby certify that the copies of the laws contained in this volume are correct transcripts of the text of the original laws, and in accordance with such section are entitled to be read in evidence.

Given under my hand and the seal of office of the Secretary of State, at the Capitol in the City of Albany, this 5th day of July, 1916.

[L. S.]

FRANCIS M. HUGO,
*Secretary of State.*

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The annotations in this book close with the cases reported in the following:

217 New York
170 Appellate Division
93 Miscellaneous
157 New York Supplement

The Supplements will cover decisions from these points.

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## CONSOLIDATORS' NOTE ON THE CIVIL RIGHTS LAW

### Scope of the Law

The proposed "Civil Rights Law" embraces those principles of organized society commonly expressed in documents known as "Bill of Rights," and such other related principles as have not found expression in any of the other consolidated laws. Such of these principles as now exist in the State Constitution and also in the statutes have been omitted from this chapter, as the State Constitution is the highest and best repository for them, and others are so numerous and so scattered through the body of our laws that it is impracticable and inexpedient to disturb them. Those that are contained in the proposed compilation are (1) such of the historic principles as found their last statutory expression in this State in the Revised Statutes, except those contained in the State Constitution, and (2) such related matter as seems appropriate to the "Civil Rights Law."

### Historical Statement

The development of the "Bill of Rights," now represented in this State by the provisions in the Constitution, supplemented by the fundamental principles contained in the Revised Statutes, may be summarized as follows:

1. *Magna Charta* (1215), the 39th and 40th articles of which contain, among others, the following provisions, which have come down to the present date:

"No freeman shall be seized, or imprisoned, or dispossessed, or outlawed, or in any way destroyed; nor will we condemn him, nor will we commit him to prison, excepting by the legal judgment of his peers, or by the laws of the land."

"To none will we sell, to none will we deny, to none will we delay, right or justice."

2. *Statute of Edward* (Edward III, 1354), which reasserts the 39th article of the Magna Charta:

"No man, of what estate or condition that he be, shall be put out of land or tenement, nor taken, nor imprisoned, nor disinherited, nor put to death, without being brought to answer by due process of law."

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3. *Petition of Rights* (1628) arising out of the Darnel case which, notwithstanding former declarations, held that a British subject could be imprisoned at the mere pleasure of the King. It included the following provisions:

"No man hereafter be compelled to make, or yield, any gift, loan, benevolence, tax, or such like charge, without common consent by act of Parliament."

"No freeman, in any such manner as is before mentioned, be imprisoned or detained."

4. *Habeas Corpus Act* (31 Car. II, Ch. 2, 1679).

5. *Charter of Liberties and Privileges.* (1st N. Y. Colonial Assembly, 1683), containing, among others, the following interesting provisions:

"THAT Every freeholder within this provice, and freemen in any Corporation, Shall have his free choise and Vote in the Electing of the Representatives without any manner of constraint or Imposicion. And that in all Eleccons the Majority of Voices shall carry itt and by freeholders is understood every one who is Soe understood according to the Lawes of England."

"THAT Noe freeman shall be taken and imprisoned or be disseized of his ffreehold or Libertye or ffree Customes or be outlawed or Exiled or any other wayes destroyed nor shall be passed upon adjudged or condemned But by the Lawfull Judgment of his peers and by the Law of this province."

"Justice nor Right shall be neither sold denyed or deferred to any man within this province."

"THAT Noe aid Tax, Tallage, Assessment, Custome, Loane, Benevolence or Imposicon whatsoever shall be layed assessed imposed or levyed on any of his Majestyes Subjects within this province or Their Estates upon any Manner of Colour or pretence but by the act and Consent of the Governour Councell and Representatives of the people in Generall Assembly mett and Assembled."

"THAT Noe man of what Estate of Condicon soever shall be putt out of his lands or Tenements, nor taken, nor imprisoned, nor disherited, nor banished nor any wayes destroyed without being brought to Answere by due Course of Law."

"THAT A Ffreeman Shall not be amerced for a small fault, but after the manner of his fault and for a great fault after the

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Greatnesse thereof Saveing to him his freehold. And a husbandman saveing to him his Wainage and a merchant likewise saveing to him his merchandize. And none of the said Amerciaments shall be assessed but by the oath of twelve honest and Lawfull men of the Vicinage provided the faults and misdemannors be not in Contempt of Courts of Judicature."

"ALL Tryalls shall be by the verdict of twelve men, and as near as may be peers or Equalls And of the neighborhood and in the County Shire or Division where the fact Shall arise or grow Whether the Same be by Indictment Infermacon Declaracon or otherwise against the person Offender or Defendant."

"THAT In all Cases Capitall or Criminall there shall be a grand Inquest who shall first present the offence and then twelve men of the neighborhood to try the offender who after his plea to the Indictment shall be allowed his reasonable Challenges."

"THAT In all cases whatsoever Bayle by sufficient Suretyes Shall be allowed and taken unlesse for treason or felony plainly and specially Expressed and menconed in the Warrant of Committment provided Alwayes that nothing herein contained shall Extend to discharge out of prison upon bayle any person taken in Execucon for debts or otherwise legally sentenced by the Judment of any of the Courts of Record within the province."

"THAT Noe person or persons which professe ffaith in God by Jesus Christ Shall at any time be any wayes molested punished disquieted or called in Question for any Difference in opinion or Matter of Religious Concernment, who doe not actually disturb the Civill peace of the province, But that all and Every such person or persons may from time to time and at all times freely have and fully enjoy his or their Judgments or Consciencyes in matters of Religion throughout all the province, they behaveing themselves peaceably and quietly and not useing this Liberty to Lycentiousnesse nor to the Civill Injury or outward disturbance of others."

6. *Declaration of Rights* (William & Mary, Ch. 2, 1689), which became the English Bill of Rights, was enacted as chapter 2, passed at the second session of Parliament, 1689, and contained the following provisions:

"That it is the right of the subjects to petition the King, and all commitments and prosecutions for such petitioning are illegal."

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"That the subjects which are Protestants may have arms for their defense suitable to their conditions, and as allowed by law."

"That the freedom of speech, and debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of parliament."

"That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

"That jurors ought to be duly impaneled and returned, and jurors which pass upon men in trials for high treason ought to be freeholders."

7. *Act of Settlement* (12 & 13 Wm. III, Ch. 2, 1700), which closes with the following paragraph:

"And whereas the Laws of England are the birthright of the people thereof, and all the Kings and Queens, who shall ascend the Throne of this realm, ought to administer the Government of the same according to the said laws, and all their officers and ministers ought to serve them respectively according to the same: The said Lords Spiritual and Temporal, and Commons, do therefore further humbly pray, That all the Laws and Statutes of this realm for securing the established religion, and the rights and liberties of the people thereof, and all other Laws and Statutes of the same now in force, may be ratified and confirmed, and the same are by his Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, and by the authority of the same, ratified and confirmed accordingly."

8. *New York Constitution of 1777,* of which Mr. Lincoln says:

"The resolution of the Provincial Convention adopted on the 1st of August, 1776, providing for a committee to 'report a plan for instituting and framing a form of government,' also directed the committee to prepare a Bill of Rights, 'ascertaining and declaring the essential rights and privileges of the good people of this state, as a foundation for such form of government.' A Bill of Rights was not reported by the committee as a part of the Constitution, nor was such a declaration of principles adopted by the convention. The committee did, however, include in the proposed Constitution a few propositions which fairly belong in a Bill of Rights; namely, the provision that the people are the source of all authority; the provision against disfranchisement, or depriving any citizen of his rights or privileges, 'unless by the

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law of the land, or the judgment of his peers'; religious toleration, preserving trial by jury, and prohibiting acts of attainder. But it should be noted that the Constitution, by article 35 continued in force, subject to alteration by the legislature, 'such parts of the common law of England, statute law of England and Great Britain, and the acts of the legislature of the colony of New York, as together did form the law of the said colony on the 19th day of April, 1775.' This actually contained the English Bill of Rights as a part of the law of New York." [Lincoln's Constitutional History of New York, Vol. 1, p. 727.]

9. *New York Bill of Rights* (L. 1787, Ch. 1) which was continued in the revisions of 1801, 1813 and 1828, with reference to which Mr. Lincoln says:

"The Bill of Rights contained in the revised statutes is still a part of the law of New York, and many of its provisions are also in the Constitution. The Bill of Rights in its original form continued in force more than forty years, and was deemed of great value and significance by the statesmen of that period. Several of its most important features were included in the Constitution of 1821, and have since remained a part of our fundamental law." [Lincoln's Constitutional History of New York, Vol. 1, p. 728.]

10. *Amendments of the United States Constitution* (1789), which may be summarized as follows:

"1. Freedom of religious profession and worship.

"2. Freedom of speech and of the press.

"3. Right of petition.

"4. Right of the people to keep and bear arms.

"5. Soldiers not to be quartered in time of peace without consent of the owner of the house, 'nor in time of war, but in a manner to be prescribed by law.'

"6. Guaranteeing immunity from unreasonable searches and seizures.

"7. Indictment necessary in prosecutions for capital or otherwise infamous crimes.

"8. No person shall be deprived of life, liberty or property without due process of law.

"9. Private property shall not be taken for public use without compensation.

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"10. Trial by jury is preserved in civil cases where the amount in controversy exceeds $20.

"11. A person accused of crime:

"a. Shall not be compelled to be a witness against himself.

"b. Is entitled to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law.

"c. Must be informed of the nature and cause of the accusation.

"d. Must be confronted with the witnesses against him.

"e. Must have compulsory process for obtaining witnesses in his favor.

"f. Is entitled to the assistance of counsel for his defense.

"12. Excessive bail shall not be required.

"13. Excessive fines shall not be imposed.

"14. Cruel and unusual punishments shall not be inflicted.

"15. No person shall 'be subject, for the same offense, to be twice put in jeopardy of life or limb.'

"16. Rights not enumerated, preserved." [Lincoln's Constitutional History of New York, Vol. 1, p. 732.]

11. *Revised Acts of 1801,* which re-enacted substantially the Bill of Rights Act of 1787.

12. *Revised Laws of 1813* (R. L. 1813, Ch. 1), which reaffirmed the principles contained in the Bill of Rights of 1787 and 1801.

13. *New York State Constitution of 1821,* which contained provisions on the following subjects:

1. Citizens not to be disfranchised.
2. Trial by jury preserved.
3. Creation of new courts limited.
4. Religious toleration.
5. Writ of habeas corpus.
6. Indictment necessary in prosecutions for capital or otherwise infamous crimes.
7. Accused may have counsel.
8. No person to be twice put in jeopardy.
9. Accused person not compelled to be a witness against himself.
10. No person to be deprived of life, liberty, or property without due process of law.

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11. Private property shall not be taken for public use without just compensation.

12. Freedom of speech and of the press.

13. Truth may be given in evidence in libel cases.

14. *Revised Statutes of 1828,* which contained a chapter on the subject usually known as the "Bill of Rights."

15. *New York State Constitution of 1846,* which reaffirmed former principles on the subject, leaving some to be expressed by statute.

16. *New York State Constitution of 1894,* which reaffirmed the principles on the subject, leaving, however, some to be expressed by statute.

As heretofore stated, not all of the principles usually stated in Bills of Rights are to be found in the proposed Civil Rights Law for the reason that many of them have been incorporated in the Constitution and some are included in other Consolidated Laws, and it has been deemed inexpedient to disturb them.

Among such are the following:

*Persons Not to be Disfranchised.* No member of this state shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers. [N. Y. Const., 1894, Art. 1, § 1.]

*Trial by Jury.* The trial by jury in all cases in which it has been heretofore used shall remain inviolate forever; but a jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law. [N. Y. Const., 1894, Art. 1, § 2.]

*Freedom of Worship; Religious Liberty.* The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all mankind; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state. [N. Y. Const., 1894, Art. 1, § 3.]

*Habeas Corpus.* The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require its suspension. [N. Y. Const., 1894, Art. 1, § 4.]

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*Excessive Bail and Fines.* Excessive bail shall not be required nor excessive fines imposed, nor shall cruel and unusual punishments be inflicted, nor shall witnesses be unreasonably detained. [N. Y. Const., 1894, Art. 1, § 5.]

*Bill of Rights.* No person shall be held to answer for a capital or otherwise infamous crime (except in cases of impeachment, and in cases of militia when in actual service, and the land and naval forces in time of war, or which this state may keep with the consent of Congress in time of peace, and in cases of petit larceny, under the regulation of the legislature), unless on presentment or indictment of a grand jury, and in any trial in any court whatever the party accused shall be allowed to appear and defend in person and with counsel as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use, without just compensation. [N. Y. Const., 1894, Art. 1, § 6.]

*Compensation for Taking Private Property; Private Roads; Drainage of Agricultural Lands.* When private property shall be taken for any public use, the compensation to be made therefor, when such compensation is not made by the state, shall be ascertained by a jury, or by not less than three commissioners appointed by a court of record, as shall be prescribed by law. Private roads may be opened in the manner to be prescribed by law; but in every case the necessity of the road and the amount of all damage to be sustained by the opening thereof shall be first determined by a jury of free-holders and such amount, together with the expenses of the proceeding, shall be paid by the person to be benefited. General laws may be passed permitting the owners or occupants of agricultural lands to construct and maintain for the drainage thereof, necessary drains, ditches and dykes upon the lands of others, under proper restrictions and with just compensation, but no special laws shall be enacted for such purposes. [N. Y. Const., 1894, Art. 1, § 7.]

*Freedom of Speech and Press.* Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. [N. Y. Const., 1894, Art. 1, § 8.]

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*Criminal Prosecutions for Libel.* In all criminal prosecutions or indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact. [N. Y. Const., 1894, Art. 1, § 8.]

*Right to Assemble and Petition; Divorce; Lotteries; Pool-selling and Gambling, Laws to Prevent.* No law shall be passed abridging the right of the people peaceably to assemble and to petition the government, or any department thereof; nor shall any divorce be granted otherwise than by due judicial proceedings; nor shall any lottery or the sale of lottery tickets, pool-selling, book-making, or any other kind of gambling hereafter be authorized or allowed within this state; and the legislature shall pass appropriate laws to prevent offenses against any of the provisions of this section. [N. Y. Const., 1894, Art. 1, § 9.]

*Escheats.* The people of this state, in their right of sovereignty, are deemed to possess the original and ultimate property in and to all lands within the jurisdiction of the state; and all lands the title to which shall fail, from a defect of heirs, shall revert, or escheat to the people. [N. Y. Const., 1894, Art. 1, § 10.]

*Feudal Tenure Abolished.* All feudal tenures of every description, with all their incidents, are declared to be abolished, saving, however, all rents and services certain which at any time heretofore have been lawfully created or reserved. [N. Y. Const., 1894, Art. 1, § 11.]

*Allodial Tenures.* All lands within this state are declared to be allodial, so that, subject only to the liability to escheat, the entire and absolute property is vested in the owners, according to the nature of their respective estates. [N. Y. Const., 1894, Art. 1, § 12.]

*Fines and Quarter-sales Abolished.* All fines, quarter-sales, or other like restraints upon alienation, reserved in any grant of land hereafter to be made shall be void. [N. Y. Const., 1894, Art. 1, § 14.]

*Damages for Injuries Causing Death.* The right of action now existing to recover damages for injuries resulting in death shall

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never be abrogated; and the amount recoverable shall not be subject to any statutory limitation. [N. Y. Const., 1894, Art. 1, § 18.]

*Qualification of Voters.* Every male citizen of the age of twenty-one years, who shall have been a citizen for ninety days, and an inhabitant of this state one year next preceding an election, and for the last four months a resident of the county, and for the last thirty days a resident of the election district in which he may offer his vote, shall be entitled to vote at such election in the election district of which he shall at the time be a resident, and not elsewhere, for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to the vote of the people, provided that in time of war no elector in the actual military service of the state, or of the United States, in the army or navy thereof, shall be deprived of his vote by reason of his absence from such election district; and the legislature shall have power to provide the manner in which, and the time and place at which, such absent electors may vote, and for the return and canvass of their votes in the election districts in which they respectively reside. [N. Y. Const., 1894, Art. 2, § 1.]

*Members Not to be Questioned for Speeches.* For any speech or debate in either house of the legislature the members shall not be questioned in any other place. [N. Y. Const., 1894, Art. 3, § 12.]

*Civil Service Appointments and Promotions.* Appointments and promotions in the civil service of the state, and of all the civil divisions thereof, including cities and villages, shall be made according to merit and fitness, to be ascertained, so far as practicable, by examinations, which, so far as practicable, shall be competitive; provided, however, that honorably discharged soldiers and sailors from the army and navy of the United States in the late Civil War, who are citizens and residents of this state, shall be entitled to preference in appointment and promotion without regard to their standing on any list from which such appointment or promotion may be made. Laws shall be made to provide for the enforcement of this section. [N. Y. Const., 1894, Art. 5, § 9.]

*Common Schools.* The legislature shall provide for the maintenance and support of a system of free common schools, wherein

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all of the children of this state may be educated. [N. Y. Const., 1894, Art. 9, § 1.]

NAME

There has been much difficulty in selecting the proper term to be applied to the group of statutes assembled in this law.

The term "Bill of Rights Law" has been suggested, but this term has come to have a somewhat restricted meaning and like the terms "Petition of Rights" and "Declaration of Rights" has an historical and political association that will hardly justify grouping under it some of the general legal rights which are here brought together.

The term "Personal Rights Law" has also met with favor, but as the term "Bill of Rights Law" is too narrow, so the term "Personal Rights Law" is rather too broad and besides it is not at all suggestive of the material found in this law.

In selecting a title for a Consolidated Law the following points should be observed:

1. The title should be short for easy reference.

2. It should be broad enough to cover the material assigned to it and any additional matter that may be inserted appropriately.

3. It should be suggestive of the character of the law and the material in it.

4. It should be some catch words if possible by which the statutes grouped under it are generally known.

5. It should be singular rather than plural except where catch words are selected which are referred to usually in the plural.

After some examination of the use by legal authorities of the term "Civil Rights" it has been decided finally to adopt the expression "Civil Rights Law" as applicable to the statutes here brought together. This term is general enough to embrace all the matter assigned to the law and such as may be assigned appropriately hereafter and it suggests the character of the law and its contents.

Bouvier says that "Civil Rights are those which have no relation to the establishment, support or management of the government. These consist in the power of acquiring and enjoying property or exercising paternal and marital powers and the like. * * * These latter rights of mankind may be reduced to three principal or primary articles; the right of personal security, which consists in a person's legal and uninterrupted enjoyment of his

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life, his limbs, his body, his health, and his reputation; the right of personal liberty, which consists in the power of locomotion, of changing situation or removing one's person to whatsoever place one's inclination may direct, without any restraint unless by due couse of law; the right of property, which consists in the free use, enjoyment, and disposal of all his acquisitions, without any control or diminution save only by the laws of the land. The relative rights are public or private; the first are those which subsist between the people and the government; as, the right of protection on the part of the people, and the right of allegiance which is due by the people to the government; the second are the reciprocal rights of husband and wife, parent and child, guardian and ward, master and servant." (Bouvier's Law Dict., Right, p. 929.)

In the "American and English Encyclopædia of Law," in an article on "Civil Rights," by Archibald R. Watson, the term is defined as follows: "Civil rights may be broadly defined as those rights which appertain to the person by virtue of his citizenship in a state or community."

In an article in the "Cyclopedia of Law and Procedure" on "Civil Rights," by James Beck Clark, the term is defined as follows: "Civil rights are those which appertain to citizenship, and which may be enforced or redressed by a civil action. They have no relation to the establishment, support, or management of government. Also a term applied to certain rights secured to all citizens of the United States by the thirteenth and fourteenth amendments to the federal constitution and by congressional action thereunder, and by state legislation." (7 Cyc. 160.) In this article, under the topic "Civil Rights," the following rights are discussed: As to property rights, employment, public schools, public conveyances, accommodations in inns, restaurants and barber shops, places of amusement, jury service, punishment for crime.

The term "Civil Rights" is very generally employed as one of the topics in digests. It forms the subject of articles in the encyclopedias and appears in Brightly's, Abbott's, General and other state and federal digests. The Encyclopædia of Pleading and Practice has an article by Malcolm Taylor on the "Civil Rights Act," and the Century Dictionary refers to the "Civil Rights Act," "Civil Rights Bill," "Civil Rights Cases." Many of the acts enunciating rights similar to those incorporated in this

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law use the term "Civil Rights." The New York Statute of 1873 (Ch. 186) is an act to provide for the protection of citizens in their "Civil and Public Rights." The New York Statute of 1895 (Ch. 1042) is entitled "An act to protect all citizens in their civil and legal rights." The United States Statute of 1875 (Ch. 114) is an act to protect all citizens in their "civil and legal rights." These illustrations are sufficient to show how commonly the term "Civil Rights" is used to cover the principles of law embraced within the proposed law.

The following is an analysis of the topic "Civil Rights" as it appears under the headings and subheadings in the "Index to the Statutes", prepared by the law library under the act of Congress of June 30, 1906, and recently submitted to the public for criticism:

"*Civil Rights:*

"Citizenship. See Citizenship.
"Conspiracy against.
"Contracts. See Contracts.
"Discrimination between Persons Prohibited.
"Elective Franchise. See Elections.
"Inns. See Inns and Innkeepers.
"Jury Service. See also Juries.
"Personal Property. See also Personal Property.
"Places of Public Amusement.
"Protection.
"Public Conveyances. See Carriers.
"Real Property. See also Real Property.
"Redress for Violation of Rights."



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# CIVIL RIGHTS LAW

**LAWS 1909, CHAP. 14**

AN ACT relating to civil rights, constituting chapter six of the consolidated laws.

**Became a law, February 17, 1909, with the approval of the Governor. Passed, three-fifths being present.**

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

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# CIVIL RIGHTS LAW

## CHAPTER 6 OF THE CONSOLIDATED LAWS

Article 1. Short title (§ 1).
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## ARTICLE 1

### Short Title

Section 1. Short title.

**§ 1. Short title.**—This chapter shall be known as the "Civil Rights Law."

**"This is a new Consolidated Law** made necessary by the presence in the Revised Statutes of provisions relating to civil rights, which have been consolidated in any existing general law. To the provisions taken from the Revised Statutes has been added other matter of a similar character from other sources." See report of Board of Statutory Consolidation, vol. 1, p. 413.

**In the Penal Law** "Civil Rights" is the title of article XLVI. It deals with forfeiture of office and suspension of civil rights (§ 510), consequence of sentence to imprisonment for life (§ 511), forfeiture of property on conviction abolished (§ 512), innkeepers and carriers refusing to receive guests and passengers (§ 513), protecting civil and public rights (§ 514), discrimination against person or class in price for admission (§ 515), return of photographs of prisoners after unsuccessful prosecution of criminal action (§ 516).

**Federal legislation.**— The Act of Congress of March 1, 1875, ch. 114, 18 U. S. Stat. L. 335, entitled "An act to protect all citizens in their civil and legal rights," declared that "all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theatres, and other places of public amusement; subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude." In Civil Rights Cases, (1883) 109 U. S. 3, 27 U. S. (L. ed.) 835, this act was held to be unconstitutional and void in its application to the states. Thirty years later the United States Supreme Court declared the act to be unconstitutional in its entirety, holding that it was impossible to separate that which is valid from that which is void. Butts v. Merchants and Miners' Transp. Co., (1913) 230 U. S. 126, 33 S. Ct. 964, 57 U. S. (L. ed.) 1422.

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Chapter 3 of the Penal Laws of the United States deals with "Offenses against the elective franchise and civil rights of citizens." Section 19 of this chapter reads as follows: "If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than five thousand dollars and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit or trust created by the Constitution or laws of the United States." (35 Stat. L. 1092.)

Section 20 provides: "Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both." (35 Stat. L. 1092.)

In the Revised Statutes of the United States, section 1977 deals with "Equal rights under the law;" section 1978, with "Rights of citizens in respect to real and personal property;" section 1979, with "Civil action for deprivation of rights;" sections 1980 and 1981, with "Conspiracy."

For cases construing all the above provisions, see Federal Statutes, Annotated, tit. *Civil Rights.*

## ARTICLE 2

### Bill of Rights

Section 2. Supreme sovereignty in the people.
3. Levying taxes and charges.
4. Right to keep and bear arms.
5. Military service by citizens.
6. Exemption from military service.
7. Quartering soldiers.
8. Right of search and seizure.
9. Freedom of elections.
10. Justice to be administered without favor and speedily.
11. Fines must be reasonable and imposed only for cause.
12. Rights of persons accused of crime.
13. Right to serve on juries.
14. Jurors not to be questioned for verdicts.

**§ 2. Supreme sovereignty in the people.**— No authority can, on any pretence whatsoever, be exercised over the citizens of this state, but such as is or shall be derived from and granted by the people of this state.

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"This section, expressive of the sovereignty of the people, goes back to the Constitution of 1777 (Art. 1), and was reaffirmed in the New York Bill of Rights Act of 1787 (¶ 1). It found its last expression in this state in the Revised Statutes of 1828 (Pt. 1, Ch. 4, § 1), since which time it has not appeared in the Constitution or acts of the legislature." Report of Board of Statutory Consolidation (1907) vol. 1, p. 440.

**Supreme authority of the people — usurpation.**— "Sovereignty or supreme power is in this country vested in the people, and only in the people." Field, J., in Fong v. Yue Ting, 149 U. S. 757. "Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts." Yick Wo v. Hopkins, 118 U. S. 370. "Sovereignty, independence, and a perfect right of self-government, can signify nothing less than a superiority to and an exemption from all claims by any extraneous power, however expressly they may be asserted, and render all attempts to enforce such claims merely attempts at usurpation." Scott v. Sanford, 19 How. (U. S.) 485. "All legislative powers appertain to sovereignty. The original power of giving the law on any subject whatever, is sovereign power." Marshall, C. J., in M'Culloch v. Maryland, 4 Wheat. (U. S.) 409.

**§ 3. Levying taxes and charges.**— No tax, duty, aid or imposition whatsoever, except such as may be laid by a law of the United States, can be taken or levied within this state, without the grant and assent of the people of this state, by their representatives in senate and assembly; and no citizen of this state can be by any means compelled to contribute to any gift, loan, tax, or other like charge, not laid or imposed by a law of the United States, or by the legislature of this state.

See the Constitution, art. 3, §§ 21, 24, and notes thereunder.

The report of the Board of Statutory Consolidation (1907) at page 440 contains a note on this section as follows: "This provision appears as early as 1628 in the Petition of Rights (¶ 1), and subsequently in the Declaration of Rights of William and Mary (2 Wm. & Mary, ch. 2, 1689, art. 4) as paragraph 12 of the New York Bill of Rights Act of 1787, and finally in the Revised Statutes of 1828 (pt. 1, ch. 4, § 2)."

**Nature of power to tax.**— "In every free country the power of laying taxes is considered a legislative power over the property and persons of the citizens; and this power the people of the United States granted to their state legislatures." Ware v. Hylton, 3 Dall. (U. S.) 232. "The power to tax belongs exclusively to the legislative branch of the government." Spencer v. Merchant, 125 U. S. 355. "In the distribution of the powers of government in this country in three departments, the power of taxation falls to the legislative." Meriwether v. Garrett, 102 U. S. 515. And to the same effect see Talbot v. Jasnon, 3 Dall. (U. S.) 163.

**§ 4. Right to keep and bear arms.**—A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms cannot be infringed.

The report of the Board of Statutory Consolidation (1907) at page 440 contains a note on this section as follows: "This provision appears in the

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Declaration of Rights of William and Mary (1689, ¶ 7), in the United States Constitution (2d amendment) and in the Revised Statutes of 1828 (Pt. 1, Ch. 4, § 3)."

*Carrying and use of dangerous weapon:* see PENAL LAW, § 1897.

**Federal and state provisions.**— This section is identical with the second amendment of the Constitution of the United States. The federal Supreme Court has decided that this amendment is a limitation only upon the power of Congress and the national government, and not upon that of the states, and cannot be made to apply to a state statute which forbids bodies of men to associate together as military organizations or to drill or parade with arms in cities and towns unless authorized by law. Presser v. State, (1886) 116 U. S. 252. See also, to the effect that this amendment is not a limitation upon the powers of the states, Ohio v. Dollison, (1904) 194 U. S. 445, 24 S. Ct. 703, 48 U. S. (L. ed.) 1062; Bolln v. Nebraska, (1900) 176 U. S. 83, 20 S. Ct. 287, 44 U. S. (L. ed.) 382, affirming (1897) 51 Neb. 581, 71 N. W. 444; Brown v. New Jersey, (1899) 175 U. S. 172, 20 S. Ct. 77, 44 U. S. (L. ed.) 119; Brown v. Walker, (1896) 161 U. S. 591, 16 S. Ct. 644, 40 U. S. (L. ed.) 819, affirming (1895) 70 Fed. 46; Monongahela Nav. Co. v. United States, (1893) 148 U. S. 312, 13 S. Ct. 622, 37 U. S. (L. ed.) 463; McElvaine v. Brush, (1891) 142 U. S. 155, 12 S. Ct. 156, 35 U. S. (L. ed.) 971; Eilenbecker v. District Court, (1890) 134 U. S. 31, 10 S. Ct. 424, 33 U. S. (L. ed.) 801; Spies v. Illinois, (1887) 123 U. S. 131, 8 S. Ct. 21, 22, 31 U. S. (L. ed.) 80; United States v. Cruikshank, (1875) 92 U. S. 542, 23 U. S. (L. ed.) 588; Fox v. Ohio, (1847) 5 How. 410, 12 U. S. (L. ed.) 213; Barron v. Baltimore, (1833) 7 Pet. 243, 8 U. S. (L. ed.) 672; Livingston v. Moore, (1833) 7 Pet. 469, 8 U. S. (L. ed.) 751; Arkansas v. Kansas, etc., Coal Co., (1899) 96 Fed. 353, reversed and remanded with direction to remand to the state court on the ground of improper removal therefrom (1901) 183 U. S. 185, 22 S. Ct. 47, 46 U. S. (L. ed.) 144; United States v. Rhodes, (1866) 1 Abb. 28, 27 Fed. Cas. No. 16,151; United States v. Hall, (1871) 13 Int. Rev. Rec. 181, 26 Fed. Cas. No. 15,282.

**Constitutionality of statute restricting right to bear arms.**— A statute, making it a misdemeanor for persons over the age of sixteen to have in their possession, without a permit, firearms which may be concealed, is constitutional and valid as a police regulation and does not violate this section. "The right to keep and bear arms is coupled with the statement why the right is preserved and protected, viz., that 'a well regulated militia being necessary to the security of a free state.' (Civil Rights Law, § 4.) If the legislature had prohibited the keeping of arms, it would have been clearly beyond its power. . . . In the statute at bar the legislature has not prohibited the keeping of arms. For the safety of the public, for the preservation of the public peace, in the exercise of the police power, the means employed being within its discretion and not in that of the courts, unless flagrantly in violation of constitutional provisions, the legislature has passed a regulative, not a prohibitory, act. Legislation which has for its object the promotion of the public welfare and safety falls within the scope of the police power and must be submitted to even though it imposes restraints and burdens on the individual." People v. City Prison, (1913) 154 App. Div. 413, 139 N. Y. S. 277.

**§ 5. Military service by citizens.**— No citizen of this state can be constrained to arm himself, or to go out of this state, or to find soldiers or men of arms, either horsemen or footmen, without the grant and assent of the people of this state, by their representatives in senate and assembly, except in the cases specially provided for by the constitution of the United States.

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The report of the Board of Statutory Consolidation (1907) at page 440 contains a note on this section as follows: "This provision appears in the Petition of Rights (1628, ¶ 1), in the Declaration of Rights (2 Wm. & Mary, 1689, Ch. 2, Art. 4), in the New York Bill of Rights of 1787 and in the Revised Laws of 1813 (Ch. 1, ¶ 12) and the Revised Statutes of 1828 (Pt. 1, Ch. 4, § 4)."

*Persons subject to military duty:* see MILITARY LAW, § 1.

**Right to freedom from restraint.**— "No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law." Union Pac. R. Co. v. Botsford, 141 U. S. 251.

**Constitution of United States.**— By article 1, section 8, of the Federal Constitution Congress has power to provide for organizing, arming and disciplining the militia, and this power being unlimited, except in the two particulars of officering and training them, according to the discipline to be prescribed by Congress, it may be exercised to any extent that may be deemed necessary by Congress. Houston v. Moore, (1820) 5 Wheat. (U. S.) 16.

**§ 6. Exemption from military service.**—All such inhabitants of this state of any religious denomination whatever, as from scruples of conscience may be averse to bearing arms, are to be excused therefrom by paying to the state an equivalent in money; and the legislature is required to provide by law for the collection of such equivalent, to be estimated according to the expense, in time and money, of an ordinary able-bodied militiaman.

The report of the Board of Statutory Consolidation (1907) at page 440 contains a note on this section as follows: "This provision appears in the New York Constitution of 1821 (Art. 7, § 5), the Revised Statutes of 1828 (Pt. 1, Ch. 4, § 5), the New York Constitution of 1846 (Art. 11, § 1) and in somewhat similar language in the New York Constitution of 1894 (Art. 11, § 1). See also Military Code, § 1."

**§ 7. Quartering soldiers.**— No soldier can in time of peace be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

The report of the Board of Statutory Consolidation (1907) at page 440 contains a note on this section as follows: "This provision appears in the Petition of Rights (1628), the New York Bill of Rights Act of 1787 (¶ 13), the United States Constitution (3d amendment), the Revised Acts of 1813 (Ch. 1, ¶ 13) and the Revised Statutes of 1828 (Pt. 1, Ch. 4, § 6)."

**§ 8. Right of search and seizure.**—The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, ought not to be violated; and no warrants can issue but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

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**The report of the Board of Statutory Consolidation (1907) at page 440 contains a note on this section as follows: "This provision appears in the United States Constitution (4th amendment) and the Revised Statutes of 1828 (Pt. 1, Ch. 4, § 11)."**

***Provision for issuance of search warrants:*** **see Code Crim. Proc., § 791 *et seq.***

**United States Constitution.**— This section is identical with the fourth amendment of the Constitution of the United States, with the exception that instead of "ought not to be violated" the Federal Constitution uses the words "shall not be violated." The Supreme Court has frequently decided that this constitutional provision has no application to state process. Ohio v. Dollison, (1904) 194 U. S. 447; Bolln v. Nebraska, (1900) 176 U. S. 87, affirming (1897) 51 Neb. 581; Brown v. New Jersey, (1899) 175 U. S. 174; Brown v. Walker, (1896) 161 U. S. 606, affirming (1895) 70 Fed. Rep. 46; Monongahela Nav. Co. v. U. S., (1893) 148 U. S. 324; McElvaine v. Brush, (1891) 142 U. S. 158; Eilenbecker v. Plymouth County, (1890) 134 U. S. 34; Spies v. Illinois, (1887) 123 U. S. 131, 166; Edwards v. Elliott, (1874) 21 Wall. (U. S.) 552, 557; Fox v. Ohio, (1847) 5 How. (U. S.) 410, 434; Barron v. Baltimore, (1833) 7 Pet. (U. S.) 243, 247; Livingston v. Moore, (1833) 7 Pet. (U. S.) 551. This amendment has no reference to civil proceedings for the recovery of debts of which a search warrant is not made a part. Murray v. Hoboken Land, etc., Co., (1855) 18 How. (U. S.) 274. For the intimate relation between the fourth and the fifth amendments, see Boyd v. U. S., (1886) 116 U. S. 633, the leading case dealing with the compulsory production of books and papers. See also for the construction of this amendment Ex p. Jackson, (1877) 96 U. S. 733; Interstate Com. Com. v. Baird, (1904) 194 U. S. 44; In re Chapman, (1897) 166 U. S. 669; Adams v. New York, (1904) 192 U. S. 597; Flint v. Stone Tracy Co., 220 U. S. 107, 31 S. Ct. 342, 55 U. S. (L. ed.) 389; American Lithographic Co. v. Werckmeister, 221 U. S. 603, 31 S. Ct. 676, 55 U. S. (L. ed.) 873; Baltimore, etc., R. Co. v. Interstate Commerce Commission, 221 U. S. 612, 31 S. Ct. 621, 55 U. S. (L. ed.) 878; Consolidated Rendering Co. v. Vermont, 207 U. S. 541, 28 S. Ct. 178, 52 U. S. (L. ed.) 327, 12 Ann. Cas. 658; Hammond Packing Co. v. Arkansas, 212 U. S. 322, 29 S. Ct. 370, 53 U. S. (L. ed.) 530, 15 Ann. Cas. 645; Wilson v. United States, 221 U. S. 361, 31 S. Ct. 538, 55 U. S. (L. ed.) 771, Ann. Cas. 1912D 558.

**Necessary allegations in warrant.**— A warrant issued on a complaint upon "information and belief" is insufficient to confer jurisdiction upon the magistrate issuing it, and is void as an unreasonable seizure. "A police officer, nor any other person, may not cause the arrest of any one on a mere allegation of information and belief. Human liberty was never so cheap as that under our law, or the system from which we derived the main body of our law. The commission of a crime must be shown by facts positively stated before a magistrate has jurisdiction to issue a warrant of arrest." But this defect in the warrant may be cured by the accused standing trial without raising objection. Matter of Blum, (1894) 9 Misc. 571, 30 N. Y. S. 396. To same effect, see Comfort v. Fulton, (1861) 39 Barb. 56.

**Subpœna duces tecum.**— This section "was not intended to interfere with the power of the courts to compel, through a subpœna duces tecum, the production upon a trial in court, of documentary evidence." In re Mohawk Overall Co., (1914) 210 N. Y. 474, 104 N. E. 925, affirming 156 App. Div. 879, 140 N. Y. S. 1132. The power given the commissioners of account of New York city to issue subpœnas duces tecum does not repeal, by implication, this section. "In view of the clear and forcible provisions of the Civil Rights Law of this state above referred to so consonant with every principle thereof, in view of the great care with which the legislature has circumscribed even the power of the Supreme Court in compelling discovery,

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we should hesitate to hold that by this charter provision it was the intention of the legislature to repeal by implication the beneficent provisions of this statute against unreasonable search and seizure and to confer upon the commissioners of accounts of the city of New York a power far in excess of that conferred upon any tribunal or official — a power so extreme as to be despotic in its character." Matter of Foster, (1910) 139 App. Div. 769, 124 N. Y. S. 667.

**Due process of law.**— To constitute due process of law it must be shown that the papers sought to be examined are material to the matter lawfully under consideration. Matter of Foster, (1910) 139 App. Div. 769, 124 N. Y. S. 667.

**Search of safe deposit box.**— A court cannot issue an order allowing a receiver to examine the contents of a safe deposit box, where such box is held in the name of the debtor and a third person. Ehrich v. Root, (1909) 134 App. Div. 432, 119 N. Y. S. 395.

**§ 9. Freedom of elections.**—All elections ought to be free; and no person by force of arms, malice, menacing, or otherwise, should presume to disturb or hinder any citizen of this state in the free exercise of the right of suffrage.

The report of the Board of Statutory Consolidation (1907) at page 441 contains a note on this section as follows: "This provision appears in the Declaration of Rights (2 Wm. & Mary, Ch. 2, 1689, Art. 8), the New York Bill of Rights of 1787 (¶ 9), the Revised Laws of 1813 (Ch. 1, ¶ 9) and the Revised Statutes of 1828 (Pt. 1, Ch. 4, § 18)."

*Elective franchise and crimes against freedom of elections:* see PENAL LAW, §§ 750–782.

**Power of government to keep elections free.**— The government "must have the power to protect the elections, on which its existence depends, from violence and corruption." Ex p. Yarbrough, 110 U. S. 657. The legislature may make laws ever so stringent to prevent the corrupt use of money in elections, or in political matters generally, or to prevent what are called political assessments on government employees, or any other exercise of undue influence over them by government officials or others." Bradley, J., in Ex p. Curtis, 106 U. S. 378.

**§ 10. Justice to be administered without favor and speedily.**— Neither justice nor right should be sold to any person, nor denied, nor deferred; and writs and process ought to be granted freely and without delay, to all persons requiring the same, on payment of the fees established by law.

The report of the Board of Statutory Consolidation (1907) at page 441 contains a note on this section as follows: "This provision appears in Magna Charta (¶ 40), New York Constitution 1787 (¶ 6), Revised Acts (¶ 16) and Revised Statutes (Pt. 1, Ch. 4, § 15)."

**§ 11. Fines must be reasonable and imposed only for cause.**— No citizen of this state ought to be fined or amerced without reasonable cause, and such fine or amercement should always be proportioned to the nature of the offense.

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The report of the Board of Statutory Consolidation (1907) at page 441 contains a note as follows: "This provision appears in Magna Charta (¶¶ 20, 21, 22), in New York Bill of Rights 1787 (¶ 7), Revised Acts (¶ 7) and Revised Statutes (Pt. 1, Ch. 4, § 16)."

*Excessive bail and fines, and cruel and unusual punishment:* see CONSTITUTION, art. 1, § 5.

**§ 12. Rights of persons accused of crime.**— In all criminal prosecutions, the accused has a right to a speedy and public trial, by an impartial jury, and is entitled to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; and to have compulsory process for obtaining witnesses in his favor. An alien is not entitled to a jury, composed in part of aliens or strangers, in an action or special proceeding civil or criminal.

The report of the Board of Statutory Consolidation (1907) at page 441 contains a note on this section affecting the first sentence as follows: "This provision appears in United States Constitution (6th amendment) and Revised Statutes (Pt. 1, Ch. 4, § 14)."

The second sentence was taken from Code Civ. Proc. § 1190.

*Right to speedy trial:* Remedy of accused not brought to trial within constitutional or statutory period. Ann. Cas. 1912D 1273. Right of a person accused of crime to a speedy trial. 85 Am. St. Rep. 187; 17 Ann. Cas. 170. Delay in prosecution as ground for the discharge of the accused. 56 L. R. A. 513. *Public trial:* Right of criminal court to exclude persons from court room. 9 Ann. Cas. 111; 44 L. R. A. (N. S.) 583; 9 L. R. A. 277. What are infringements upon right to public trial. 28 Am. St. Rep. 308. *Confrontation with witnesses:* Depositions in criminal cases. Ann. Cas. 1916A 1066. Right of accused to be confronted with witnesses and what is an invasion of that right. 129 Am. St. Rep. 23; Ann. Cas. 1913D 673. *Compulsory process for obtaining witnesses:* Power to regulate or restrict right to compulsory process. 8 L. R. A. (N. S.) 509.

**Confrontation of witnesses.**— The right of the accused to be confronted with his accuser exists only on the trial of the criminal charge. People v. City Prison, 154 App. Div. 728, 139 N. Y. S. 828. And it is subject to the qualification that if, in a preliminary examination before the indictment or trial, the accused has been confronted with his accuser and has had an opportunity to cross-examine him through counsel, then the testimony of the accuser, so taken in the preliminary examination, may be used at the trial, provided such witness is at that time dead or beyond the jurisdiction of the court. People v. Fish, (1891) 125 N. Y. 136, 26 N. E. 319; People v. City Prison, 154 App. Div. 728, 139 N. Y. S. 828; People v. Vitusky, 155 App. Div. 139, 140 N. Y. S. 19. A statute is constitutional which provides that, where the accused, in a criminal prosecution, has been confronted with and has cross-examined the witnesses against him at a preliminary examination, the deposition of a witness may be used at the trial upon indictment if such witness be dead, insane, or cannot be found. People v. Williams, (1885) 35 Hun 516.

In New York county, by the provisions of the Code of Criminal Procedure, a transcript of the stenographer's minutes of the preliminary examination may be read at trial instead of the deposition, where neither the defendant nor the district attorney raises objection. People v. Vitusky, (1913) 155 App. Div. 139, 140 N. Y. S. 19.

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In a criminal prosecution for false registration, the accused must be confronted with the witnesses against him, and failure of accused to become a citizen by taking out naturalization papers cannot be shown by certificate of the record by the clerk of the court, but must be proved by the appearance of the witness in court. People v. Bromwich, (1911) 200 N. Y. 385, 93 N. E. 933, affirming 135 App. Div. 67, 119 N. Y. S. 833.

**§ 13. Right to serve on juries.**— No citizen of the state possessing all other qualifications which are or may be required or prescribed by law, shall be disqualified to serve as grand or petit juror in any court of this state on account of race, creed or color, and any person charged with any duty in the selection or summoning of jurors who shall exclude or fail to summon any citizen for the cause aforesaid shall, on conviction thereof, be deemed guilty of a misdemeanor and be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned not less than thirty days, nor more than ninety days, or both such fine and imprisonment.

This is substantially section 3 of L. 1895, ch. 1042.

The Act of Congress of March 1, 1875, ch. 114, 18 Stat. L. 336, 4 Fed. Stat. Annot. 740, provides as follows: "That no citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States, or of any State, on account of race, color, or previous condition of servitude; and any officer or other person charged with any duty in the selection or summoning of jurors who shall exclude or fail to summon any citizen for the cause aforesaid shall, on conviction thereof, be deemed guilty of a misdemeanor, and be fined not more than five thousand dollars." This Act was held to be constitutional by the Supreme Court of the United States in Ex p. Virginia, (1879) 100 U. S. 339, wherein a state judge was charged with excluding or failing to select as grand and petit jurors certain citizens of the African race. The court held that the provisions of the Act applied to the selection of jurors in the state as well as the federal courts, and officers of a state court in selecting jurors, although they derive their authority from the state, are bound to obey this statute. See also County Judges of Virginia, (1873) 3 Hughes 576, 30 Fed. Cas. No. 18,259.

**§ 14. Jurors not to be questioned for verdicts.**—A juror shall not be questioned, and is not subject to an action, or other liability civil or criminal, for a verdict rendered by him, in an action in a court of record, or not of record, or in a special proceeding before an officer, except by indictment, for corrupt conduct, in a case prescribed by law.

This section was formerly section 1192, Code Civ. Proc.

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## ARTICLE 3

### Privilege from Arrest

Section 20. No imprisonment for non-payment of costs in certain cases.
21. No imprisonment for non-payment of money pursuant to judgment or order requiring payment of money due upon contract.
22. Privilege of officers and prisoner from arrest while passing through another county.
23. No person to be arrested in civil proceedings without a statutory provision.
24. Privilege from arrest of officers of courts of record.
25. Witness exempt from arrest.
26. Action against officer making arrest of exempt person.

**§ 20. No imprisonment for non-payment of costs in certain cases.**—A person shall not be arrested or imprisoned, for the non-payment of costs, awarded otherwise than by a final judgment, or a final order, made in a special proceeding instituted by state writ, except where an attorney, counselor, or other officer of the court, is ordered to pay costs for misconduct as such, or a witness is ordered to pay costs on an attachment for non-attendance.

This section was formerly section 15, Code Civ. Proc.

**Liability of assignee for costs.**— This section did not repeal section 321 of the former Code of Procedure, which made an assignee of a pending action liable for costs; but a capias ad satisfaciendum against the assignee for the payment of costs is not issuable. Under that section, it was held that the process issued should be a bailable attachment, returnable before the court, and on its return the court should examine whether the party wrongfully refused to pay the costs. Morrison v. Lester, (1878) 15 Hun 538.

**Costs in tort action.**— In an action of tort, where the defendant is liable to arrest and imprisonment if the plaintiff succeeds, a final judgment in favor of the defendant dismissing the complaint and awarding costs may be enforced by execution against the person. Saffier v. Haft, (1903) 86 App. Div. 284, 83 N. Y. S. 763.

In an action of tort where the costs exceed the amount of the verdict awarded the plaintiff, and a judgment for the excess of costs above the verdict is entered in favor of the defendant, the plaintiff can be imprisoned under an execution issued against his person upon such judgment. "By section 1487 of the Code of Civil Procedure an execution against the person is permitted where the plaintiff's right to arrest the defendant depends upon the nature of the action. This was such an action, being one strictly for a tort which was set out in the complaint. The Nonimprisonment Act does not free the plaintiff from arrest, because the action is not upon a contract. The Code gives a

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right of arrest in actions of tort against a defendant. In case of failure to maintain the action, it has been repeatedly held that an execution against the person of the plaintiff was proper for the costs. Here there was a recovery, but not of sufficient amount to carry costs in favor of the plaintiff. The plaintiff was therefore bound to pay costs." Philbrook v. Kellogg, (1880) 21 Hun 238.

**Contempt proceedings against an administrator.**— Proceedings for contempt may not be had against an administrator to collect motion costs, awarded against him. The proper mode of collection is by an execution under sections 779 and 2556 of the Code of Civil Procedure. Matter of Lippincott, (1886) 5 Dem. 299.

**Guardian ad litem.**— In a tort action brought by a guardian on behalf of his ward, where the case is dismissed and an execution, issued against the estate of the guardian, is returned unsatisfied, execution may be issued against the guardian's person for costs, awarded the defendant, without application being made to the court. "The action was brought for a wrong, upon which, if the plaintiff had recovered, an execution against the person of the defendant might have been issued (Code of Civ. Proc. § 1487). And as the plaintiff failed to recover finally in the action, the defendant was entitled to an execution of this description for the collection of the costs recovered by him." Miller v. Woodhead, (1889) 52 Hun 127, 5 N. Y. S. 88.

The compensation allowed a guardian ad litem for representing an infant cannot be collected by contempt proceedings but may be collected out of the infant's estate. "The order in question was an adjudication by the court between the guardian and his ward, so far as the question of compensation is concerned, and the amount thus fixed is a claim against the estate of the infant, for the collection of which the Code provides a suitable remedy. Code Civil Proc. §§ 15, 779. Such being the case, the guardian must avail himself of that remedy, and, in the opinion of the court, cannot proceed against the defendants for a contempt in case of their refusal to pay upon his demand." Richardson v. Van Voorhis, (1888) 51 Hun 636 mem., 3 N. Y. S. 396.

**Nonpayment of costs in action to annul conveyance.**— In an action to annul a conveyance fraudulently obtained, where a judgment has been awarded in favor of the plaintiff, with costs, an execution may issue against the person of the defendant, under subdivision 4 of section 550 of the Code of Civil Procedure, for the collection of costs. "It is not to be supposed, in view of the careful provisions which have been made upon this subject, that the legislature intended to relieve a person who had fraudulently deprived another of his or her property from liability for final arrest after that fact had been necessarily determined against him by the final decision of the action. But the purpose of the law has been, where the fact has been so adjudicated, to render him liable for final arrest, for the reason that the nature of the action itself, and its necessary determination, must conclusively establish the fact that he has been guilty of a wrong for which the plaintiff should be secured this mode of redress. The execution in this case was justified by the authority of subdivision 4 of section 550 of the Code. It was an action where the nature of the subject was that of a legal wrong, for the complete redress of which, and the collection of the expenses necessarily incurred in prosecuting the suit, the plaintiff has become entitled to proceed against the defendant's person." Smith v. Duffy, (1885) 37 Hun 506.

**Surrogate's decree for costs.**— A surrogate's decree directing the payment of costs cannot be enforced by imprisonment. "Section 15 relates to costs, and to costs alone, and prohibits imprisonment for their collection. Section 2555 relates to decrees of Surrogates' Courts directing the payment of money or the performance of any other act, and is not at all in conflict with section 15. The two provisions can have full force and effect and stand together.

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If the decree in the surrogate's court simply directs the payment of costs and nothing else, imprisonment cannot follow, under the provisions of section 15." In re Humfreville, (1897) 154 N. Y. 115, 47 N. E. 1086, reversing 19 App. Div. 381, 46 N. Y. S. 439.

**Liability of attorney for costs.**— An attorney is not liable to arrest for nonpayment of costs awarded against him on the determination of an appeal from an order, where he has refused to deliver, to the substituted attorney succeeding him, a copy of the entries in the register kept by him, showing what had taken place in the litigation up to the time of the substitution. "He did not misconduct himself in endeavoring to sustain the order. He was entirely justifiable in so doing, by the order which had been made in his favor, from which the appeal was taken. And the adjudication made by the court reversing the order contains no intimation that either his refusal to furnish a copy of his entries or such resistance to the appeal was, in any respect, considered to be improper. . . . As no actual misconduct could be affirmed simply from the effort made to sustain the order from which the appeal had been taken, the attorney is not liable to personal arrest or punishment for the failure to pay the costs and disbursements recovered against him." Mack v. Cohen, (1882) 27 Hun 463.

An attorney, who, from improper motives, institutes disbarment proceedings against another attorney, is guilty of such misconduct as to render him liable to have the cost of the proceedings awarded against him, and may be imprisoned for nonpayment of such costs; and the fact that he is acting for himself in the proceedings is immaterial. "The institution of such a proceeding without grounds, and the prosecution of it with improper motives, is misconduct in an attorney for which the court may impose costs upon him, and the order shows that the costs in question were imposed for such misconduct." In re Kelly, (1875) 62 N. Y. 198.

**Sheriff's fees.**— Upon the vacation of an attachment, the fees of a sheriff for executing the attachment cannot be collected by contempt proceedings. "In regard to the motion to punish the plaintiff for contempt in not paying the costs ordered to be paid by the plaintiffs to the defendants, I think there is too much doubt in relation to the law to warrant or justify me in signing an order to arrest and imprison the plaintiffs. It is a harsh and severe remedy and should not be resorted to or applied except in a clear case." Hall v. United States Reflector Co., (1883) 4 Civ. Pro. 148.

**§ 21. No imprisonment for non-payment of money pursuant to judgment or order requiring payment of money due upon contract.**— Except in a case where it is otherwise specially prescribed by law, a person shall not be arrested or imprisoned for disobedience to a judgment or order, requiring the payment of money due upon a contract, express or implied, or as damages for non-performance of a contract.

This section was formerly section 16, Code Civ. Proc.

**Scope of section.**— This section does not apply to tort actions; hence a defendant is not protected from arrest where the affidavit, presented for the purpose of obtaining a warrant, shows that a judgment has been rendered against the defendant for fraudulently obtaining money in violation of an injunction; but such an affidavit gives the court no jurisdiction to issue a warrant of arrest under the provisions of the act "to abolish imprisonment for debt," etc. (Chap. 300, Laws 1831). People v. Speir, (1879) 77 N. Y. 144, 57 How. 274, reversing 12 Hun 70.

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**Arrest of bailee.**— Where the plaintiff's declaration contains four counts, the first two setting out a contract and the last two founded on the contract implied by law between bailor and bailee, and a general verdict is obtained against the defendants, the imprisonment of one of them on a capias ad satisfaciendum is unlawful under 1 R. S. 807 (2d ed.), sec. 1, and such defendant must be discharged. Brown v. Treat, (1841) 1 Hill 225.

**Default of attorney in repaying costs.**— An attorney who has received money, in payment of costs in a previous action, through an order, which has been reversed, may be compelled to make restitution by order and attachment. "It has been the uniform practice of the courts to exercise summary jurisdiction over the conduct of parties and attorneys, in actions pending in court, and enforce obedience to orders and directions made by it, in the interest of fair dealing and honesty, to protect all parties or persons whose rights have been affected by the litigation. Both parties and attorneys who, through the aid of the court, have come into possession of property or money during a litigation, which subsequent proceedings in the action show was either wrongfully acquired or unjustly retained, may be compelled to restore it to the rightful owner by order and attachment to enforce such restoration." Forstman v. Schulting, (1888) 108 N. Y. 110, 15 N. E. 366, 13 N. Y. St. Rep. 483, affirming 42 Hun 643, 4 N. Y. St. Rep. 463.

**Failure of purchaser to complete foreclosure sale.**— A purchaser at a foreclosure sale, who fails to complete the sale in accordance with the court's order, may be punished for contempt. "A motion to complete the sale is substantially a summary proceeding to compel the specific performance of the contract of the bidder to buy, and to a very considerable extent it stands upon the same footing and is to be decided by the same equitable considerations as an action for that purpose; and whether, upon such a motion, the court will direct the purchaser to complete the sale, or will direct a resale to be had at the expense of the purchaser, is largely in its discretion. But when the purchaser has an opportunity to appear upon such a motion and to urge upon the court the equitable considerations which should induce it to refuse to order a completion of the sale and to grant the plaintiff relief in some other way, he has had his day in court upon that subject, and whatever conclusion the court reaches is binding upon the purchaser, and he is bound to obey it precisely as the purchaser in an ordinary contract would be bound to obey a judgment for its specific performance." Burton v. Linn, (1897) 21 App. Div. 609, 47 N. Y. S. 835, reversing 21 Misc. 266, 47 N. Y. S. 693.

But a purchaser of property at a foreclosure sale, who defaults in payment, is not liable as for a contempt upon failure to pay the deficiency resulting from a resale of the property in consequence of his default. Betz v. Buckel, (1893) 30 Abb. N. Cas. 278, 24 N. Y. S. 487.

**§ 22. Privilege of officers and prisoner from arrest while passing through another county.**—A prisoner conveyed to jail through another county pursuant to section one hundred and eighteen of the code of civil procedure, or the officer having him in custody, is not liable to arrest in any civil action or special proceeding, while passing through another county.

The substance of this section was contained in Code Civ. Proc. § 119. Section 118 of the Code provides for conveying a prisoner to jail through another county.

**Liability for violation of section.**— A person arrested in one county, and being conveyed through a second county under the conditions of this section,



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is exempt from arrest, and all persons connected with the second arrest of such prisoner are guilty of a trespass and liable to an action for unlawful arrest. Love v. Humphrey, (1832) 9 Wend. 204.

**§ 23. No person to be arrested in civil proceedings without a statutory provision.**—A person shall not be arrested in a civil action or special proceeding, except as prescribed by statute. The writ of ne exeat is abolished.

This section was formerly section 548, Code Civil Procedure. The right to arrest in an action, the circumstances under which this right may be exercised, and the persons who may be arrested are covered by Code Civ. Proc. §§ 549–555. The decisions applying and construing these sections are therefore not within the scope of this work.

**Policy of statute.**— The policy of the statute is to abolish imprisonment for debt. Kessler v. Levy, (1895) 11 Misc. 275, 23 N. Y. S. 260, affirmed (1895) 147 N. Y. 700, 42 N. E. 723, reargument denied 12 Misc. 116, 33 N. Y. S. 54. To the same effect, see National Bank of Commonwealth v. Temple, (1870) 39 How. Pr. 432; McGovern v. Payn, (1859) 32 Barb. 83; Mann v. Chrestopulos, (1903) 87 App. Div. 222, 84 N. Y. S. 372.

**Writ of ne exeat abolished.**— The writ of ne exeat having been abolished by statute, an appeal bringing up the question of want of authority in the court to issue the writ will not be considered, where a motion to vacate the writ has been passed upon and general relief given the defendant. Collins v. Collins, (1880) 80 N. Y. 24.

**§ 24. Privilege from arrest of officers of courts of record.**— An officer of a court of record, appointed or elected pursuant to law, is privileged from arrest, during the actual sitting, which he is required to attend, of a term of the court of which he is an officer, and no longer; but an attorney or counselor is not thus privileged, unless he is employed in a cause, to be heard at that term.

This section was formerly section 565, Code Civil Procedure.

**§ 25. Witness exempt from arrest.**—A person duly and in good faith subpœnaed or ordered to attend, for the purpose of being examined, in a case where his attendance may lawfully be enforced by attachment or by commitment, is privileged from arrest in a civil action or special proceeding, while going to, remaining at, and returning from, the place where he is required to attend. An arrest, made contrary to the provisions of this section, is absolutely void and is a contempt of the court, if any, from which the subpœna was issued, or by which the witness was directed to attend.

This section was derived from Code Civ. Proc. §§ 860, 863.

**Waiver of exemption.**— A defendant is exempt from arrest where he is attending a trial as a witness, under subpœna, but this exemption is personal,

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and may be waived. Here, "the defendant waived his privilege by putting in bail. Had he claimed his privilege, the officer before whom he was under examination had power to discharge him out of custody. The defendant also waived his privilege by giving notice by his attorney of retainer in the cause, and demanding a copy of the complaint. If he wished to preserve his right to move to discharge the arrest, the attorney should have appeared specially." Stewart v. Howard, (1853) 15 Barb. 26. See to the same effect, Petrie v. Fitzgerald, (1864) 1 Daly 401. A witness while attending a trial to which he has been summoned is exempt from service of process in a civil action, but this privilege of exemption is personal and will be regarded as waived if not claimed at the first opportunity. Sebring v. Stryker, (1894) 10 Misc. 289, 24 Civ. Proc. 126, 30 N. Y. S. 1053. In Mackay v. Lewis, (1876) 7 Hun 83, it was held that a person attending as a witness is privileged from arrest upon civil process, and waived no rights by giving bail.

**Voluntary attendance of witness.**— Where a witness has attended a trial, under subpœna, has been examined and dismissed, and attends the next day upon request of counsel, he is not exempt from arrest. "The statute only extends to the witness the exemption when he is attending under compulsion of a subpœna, and as in this case the defendant's attendance as a witness before the referee was entirely voluntary, he could not claim the exoneration from arrest given by the statute." Hardenbrook's Case, (1859) 8 Abb. Pr. 416.

**Privilege of nonresident witness or party.**— A nonresident attending a creditors' meeting in a bankruptcy proceeding cannot be subpœnaed as a witness in another action, for "in proceedings in bankruptcy the due administration of justice requires that all the creditors should be free to attend, without interference by service of process of any kind." Even though the defendant was attending the meeting as a party or as attorney for other parties, he is still privileged from arrest. Matthews v. Tufts, (1882) 87 N. Y. 568. A nonresident who attends court for the purpose of proving a will, to which he is a subscribing witness, is privileged, while returning home, from arrest by process issued out of the Mayor's Court. Norris v. Beach, (1807) 2 Johns. 294. A nonresident cannot be served with process in a civil suit while attending a court in this state as a witness. "It is the policy of the law to protect suitors and witnesses from arrests upon civil process while coming to and attending the court and while returning home. This rule is especially applicable in all its force to suitors and witnesses from foreign states, attending upon the courts of this state. . . . This immunity is one of the necessities of the administration of justice, and courts would often be embarrassed if suitors or witnesses while attending court could be molested with process." Person v. Grier, (1876) 66 N. Y. 124, 23 Am. Rep. 35.

A nonresident, who is attending court as a witness in an action to which he is a party, is privileged, while in attendance and returning home, not only from arrest, but from service of process for the commencement of any action against him. "Nonresident witnesses cannot be reached by the process of the courts, and their attendance must therefore be voluntary; but if, while so attending, the courts allow them to be subject to actions to be commenced in the courts of this state, and thus subjected to the necessity of remaining or returning to litigate suits in a foreign forum, a most serious obstacle is interposed to their voluntary attendance. It would be intolerable that the creditor of a foreign witness residing in the same state with him should be permitted to follow him when he comes as a witness in our courts, to harass him with suits at a distance from his means of defense." Merril v. George, (1862) 23 How. Pr. 331. To same effect, see Sanford v. Chase, (1824) 3 Cow. 381.

A nonresident, while in attendance upon a court of this state as a witness, is not only exempt from arrest, but is also exempt from being served with

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process in a civil suit which does not authorize an arrest, and if so served, he is entitled to have such summons set aside absolutely and discharged. "It cannot be expected that citizens of other states will voluntarily appear as witnesses in this state, if they incur the hazard of being sued in our courts, while in good faith attending solely for the purpose of being witnesses." Sever v. Robinson, (1854) 3 Duer 622.

A resident of another state, while attending a United States court as witness, cannot be served with process in a suit against him personally, or as executor or administrator. "It cannot be questioned by this court but that the Court of Appeals has established a general principle of law that the resident of a foreign state cannot be served with process for the commencement of an action against him while attending in this as a witness before one of the courts held herein." Graften v. Weeks, (1878) 7 Daly 523.

But in Jenkins v. Smith, (1878) 57 How. Pr. 171, it was held that nonresidents of the state are not exempt from service of summons without arrest, while attending a United States court in the state in a suit to which they are parties, and that such exemption from process applied only to nonresident witnesses. The privilege of suitors in such a case, it was held, was from arrest only, and not from the service of civil process.

A resident of a foreign state is privileged from service of summons in a civil case or arrest in such case while he is attending an involuntary bankruptcy proceeding instituted against him in this state. The fact that the United States District Court has adjudged, in a habeas corpus proceeding by the defendant, that the arrest was not a violation of the Bankruptcy Act, does not preclude a state court from passing on the question of the validity of such arrest, as such court has the right to determine the propriety and regularity of the service of its own process. Goldsmith v. Haskell, (1907) 120 App. Div. 403, 105 N. Y. S. 327.

**Witness in supplementary proceedings.**— A defendant is privileged from arrest while returning home from attendance as a witness in supplementary proceedings instituted by a judgment creditor against him, and if arrested is entitled to be discharged absolutely, because the provisions of section 860 of the Code of Civil Procedure have been violated, and he cannot be deprived of the right to recover damages for such arrest. Scofield v. Kreiser, (1891) 61 Hun 368, 21 Civ. Proc. 294, 16 N. Y. S. 126.

**Resident witness.**— A resident witness is exempt only from arrest while attending for examination, but not from the service of process. Nonresident witnesses are entitled to be discharged absolutely. Frisbie v. Young, (1877) 11 Hun 474.

**§ 26. Action against officer making arrest of exempt person.** —An action may be maintained, by the person arrested, against the officer or other person making an arrest contrary to the provisions of the last section, in which the plaintiff is entitled to recover treble damages. A similar action may also be maintained, in a like case, by the party in whose behalf the witness was subpœnaed, or the order procured, to recover the damages sustained by him, in consequence of the arrest. But a sheriff, or other officer, or person, is not so liable, unless the person claiming an exemption from arrest, makes, if required by the sheriff or officer, an affidavit, to the effect that he was legally subpœnaed or

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ordered to attend, and that he was not so subpœnaed or ordered by his own procurement, with the intent of avoiding arrest. In his affidavit he must specify the court or officer, the place of attendance, and the cause in which he was so subpœnaed or ordered. The affidavit may be taken before the officer arresting him, and exonerates the officer from liability for not making the arrest.

This section was derived from Code Civ. Proc. §§ 863, 864.

**Only party making arrest liable.**— In case of the arrest of a privileged person, only the person making the arrest is liable. "It is the obvious and inevitable construction of the statute (§§ 863 and 864) that the action is authorized only against the person making the arrest. Had the liability imposed been intended to comprehend the plaintiff and his attorney, the law would have so declared in terms, instead of suffering such a severe penalty to lurk in the ambush of an equivocal implication." Kreiser v. Scofield, (1894) 10 Misc. 350, 24 Civ. Proc. 170, 31 N. Y. S. 23, reversing (1894) 9 Misc. 200, 29 N. Y. S. 685.

**Form of action.**— The action in such a case must be under the statute, and not for false imprisonment. "At common law, an arrest of a privileged person is voidable only, not void; does not constitute a trespass, and so is unavailable and insufficient as foundation of an action for false imprisonment." Kreiser v. Scofield, (1894) 10 Misc. 350, 24 Civ. Proc. 170, 31 N. Y. S. 23, reversing (1894) 9 Misc. 200, 29 N. Y. S. 685.

## ARTICLE 4

### Equal Rights in Places of Public Accommodation and Amusement

Section 40. Equal rights in places of public accommodation or amusement.
41. Penalty for violation.

**§ 40. Equal rights in places of public accommodation, resort or amusement.**—All persons within the jurisdiction of this state shall be entitled to the full and equal accommodations, advantages and privileges of any place of public accommodation, resort or amusement, subject only to the conditions and limitations established by law and applicable alike to all persons. No person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any such place, shall directly or indirectly refuse, withhold from or deny to any person any of the accommodations, advantages or privileges thereof, or directly or indirectly publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement, to the effect that any of the accommodations, advantages and privileges of any

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such place shall be refused, withheld from or denied to any person on account of race, creed or color, or that the patronage or custom thereat, of any person belonging to or purporting to be of any particular race, creed or color is unwelcome, objectionable or not acceptable, desired or solicited. The production of any such written or printed communication, notice or advertisement, purporting to relate to any such place and to be made by any person being the owner, lessee, proprietor, superintendent or manager thereof, shall be presumptive evidence in any civil or criminal action that the same was authorized by such person. A place of public accommodation, resort or amusement within the meaning of this article, shall be deemed to include any inn, tavern or hotel, whether conducted for the entertainment of transient guests, or for the accommodation of those seeking health, recreation or rest, any restaurant, eating-house, public conveyance on land or water, bath-house, barber-shop, theater and music hall. Nothing herein contained shall be construed to prohibit the mailing of a private communication in writing sent in response to a specific written inquiry.

Amended by L. 1913, ch. 265. This section before the amendment read as follows: "All persons within the jurisdiction of this state shall be entitled to the full and equal accommodations, advantages, facilities and privileges of inns, restaurants, hotels, eating-houses, bath-houses, barber-shops, theaters, music halls, public conveyances on land and water, and all other places of public accommodation or amusement, subject only to the conditions and limitations established by law and applicable alike to all citizens."

The section as incorporated in the Consolidated Laws was section 1 of L. 1895, ch. 1042.

The Civil Rights Act of 1895, ch. 1042, applied only to "citizens."

*Penal Law*, § 515, relates to "discrimination against person or class in price of admission."

*Statutes securing equal rights in places of public accommodation:* see 9 Ann. Cas. 69; Ann. Cas. 1912B 860; 9 L. R. A. (N. S.) 601; 19 L. R. A. (N. S.) 90; 52 L. R. A. (N. S.) 744; application of civil rights statutes to barbers, 15 Ann. Cas. 265; humiliation as element of damages for exclusion, 14 L. R. A. (N. S.) 1242.

*Discrimination against colored persons by insurance companies:* see INSURANCE LAW, § 90.

**The purpose of the amendment of 1913** was to give greater efficacy to the policy of the original statute, to forbid the accomplishment of the discrimination barred by the statute, not only by a direct exclusion, but also by the indirect means specified. Woollcott v. Shubert, 217 N. Y. 212, 111 N. E. 829, wherein the court said: "The debates in the present case conclusively show that the cause which led to the passage of the act of 1913 was the practice of the proprietors of some of the places designated in the act to advertise or notify the public and individuals that the advantages and privileges of those places would be refused to persons on account of race or creed, thereby evading indirectly the effect of the act of 1895, that the practice was deemed disgraceful and mischievous, and that the purpose of the act was

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to prohibit it as well as the denial of those advantages and privileges, on account of race, creed, or color, to actual applicants for them — to forbid the proprietors of the enumerated places to preclude, on account of race, creed, or color, the attempts contemplated, as well as to defeat for the same reason the attempts actually made for admission."

**Rule of construction.**— This statute is highly penal and it must be therefore strictly construed. Burks v. Bosso, 180 N. Y. 341, 73 N. E. 58, 105 A. S. R. 762; Johnson v. Auburn, etc., Electric R. Co., 169 App. Div. 864, 156 N. Y. S. 93.

**Constitutionality.**— This section is constitutional as an exercise by the state of its police power over places affected with a public interest. So far as it undertakes to prescribe that the owner of a place of amusement shall not exclude therefrom any citizen by reason of race, color or previous condition of servitude, it is not an unconstitutional interference with private rights in that it restricts the owner of property in respect to its lawful use, and as to an incident which is not a legitimate matter of regulation by law. The quasi-public use to which the owner of such a place devoted his property gives the legislature a right to interfere. It was a valid exercise of the police power of the state over a subject within the cognizance of the legislature. People v. King, (1888) 110 N. Y. 418, 18 N. E. 245, 6 A. S. R. 389, 1 L. R. A. 293.

**Exclusion from race meeting.**— The exclusion from its races, by a racing association, of a person who has broken its rules, is not within the prohibition of this section, as such rules apply to all persons alike and make no discrimination based on race, color or creed. Grannan v. Westchester Racing Ass'n, (1897) 153 N. Y. 449, 47 N. E. 896, reversing 16 App. Div. 8, 44 N. Y. S. 790. In this connection the court said: "We think the purpose of the statute now under consideration was to declare that no person should be deprived of any of the advantages enumerated, upon the ground of race, creed or color, and that its prohibition was intended to apply to cases of that character, and to none other. It is plain that the legislature did not intend to confer upon every person all the rights, advantages and privileges in places of amusement or accommodation, which might be enjoyed by another. Any discrimination not based upon race, creed or color does not fall within the condemnation of the statute. Neither the statute authorizing the holding of races or race meetings, nor the rules of the jockey club, made any such distinction, as the penalties for a breach of the rules of the club or of the usages of the turf are applicable to all alike."

**Exclusion from theater.**— At the common law a theater, while affected by a public interest, which justified licensing under the police power or for the purpose of revenue, is in no sense public property or a public enterprise. It is not governed by the rules which relate to common carriers or other public utilities. The proprietor does not derive from the state the franchise to initiate and conduct it. His right to and control of it is the same as that of any private citizen in his property and affairs. He has the right to decide who shall be admitted or excluded. His rights at the common law, in the respect of controlling the property, entertainments, and audience, have been too recently determined by us to be now questionable. Section 40 modifies this common-law right of a proprietor of a theater to the extent of preventing him from excluding from it a person upon the ground of race, creed or color. But he is not prevented from excluding a person on other grounds, as that he is a dramatic critic. Woollcott v. Shubert, 217 N. Y. 212, 111 N. E. 829. This was an appeal from a portion of an order of the Appellate Division of the Supreme Court of the First Department (see 155 N. Y. S. 1150 mem.) affirming an order of the Special Term granting defendants' motion for judgment on the pleadings. The plaintiff appealed by permission, and the Appellate Division certified the following question: "Does the complaint state facts sufficient to constitute a cause of action?" The appeal was

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affirmed, the Court of Appeals holding that the question certified should be answered in the negative. The complaint alleged that the defendants controlled and conducted many theaters; that the plaintiff gained his livelihood as the dramatic critic on the staff of the New York Times; that he wrote, and the New York Times published, a legitimate and proper criticism of one of the productions controlled by the defendants; that it displeased the defendants, and therefore they excluded the plaintiff from one of their theaters, refused to permit him to enter it upon the same terms as the general public, and threatened to exclude him from all their theaters. The complaint demanded a judgment permanently restraining the defendants from continuing the acts complained of. In 90 Misc. 474, 154 N. Y. S. 754, the same case was before a judge at Special Term, the question in issue being whether an injunction would lie pending the determination of the case, restraining the defendants from carrying out their threat to eject the plaintiff from their theaters. It was held that it would, as the case fell within the equitable jurisdiction of the court; but on appeal to the Appellate Division of the Supreme Court (see 169 App. Div. 194, 610, 154 N. Y. S. 643) the order of the judge at Special Term granting an injunction pendente lite was reversed on the ground that the remedy for the violation of the statute having been prescribed, that remedy was exclusive and relief in equity was not obtainable.

A regulation by the owners of a theater whereby they refuse admission to persons buying tickets on the sidewalk is reasonable and not a violation of this section. Collister v. Hayman, (1905) 183 N. Y. 250, 76 N. E. 20, 111 A. S. R. 740, 5 Ann. Cas. 344, 1 L. R. A. (N. S.) 1188.

**Refusal to sell or furnish theater seats to colored person.**— Refusal to sell seats in a theater to a colored person, when they had been sold to previous purchasers, is not a violation of this section. Hull v. Eighty-sixth Street Amusement Co., (1913) 144 N. Y. S. 318. Said the court: "The complaint alleges that the defendant denied plaintiff the full enjoyment of the privileges of defendant's theater because of his color, and refused to sell him a ticket which would permit him to witness from seats in the first balcony or orchestra of the theater the entertainment being given therein. The uncontradicted evidence shows that plaintiff asked for 'seats,' and at the time he made this request the 'seats' had been sold and were actually occupied by previous purchasers. This evidence does not show a violation of the Civil Rights Law referred to above, and is insufficient to establish a cause of action."

Refusal to allow a colored person to occupy a seat in a theater which she has purchased is a discrimination because of color, and it is immaterial that a seat is offered her in another part of the theater. "In the case at bar," said the court, in reaching this conclusion, "the defendant through its agents sold to the plaintiff a ticket entitling her to a seat in the orchestra circle. This ticket constituted the evidence of her right to occupy such seat and was an assurance to her on the part of the defendant that she could witness the performance in such theater in the seat designated upon the ticket which was sold to her, and she was entitled to view the performance from that seat without interference because of her race, creed or color. She was entitled to the seat which she purchased unless by her own personal misconduct it became necessary in the reasonable conduct of the defendant's business to eject her from the theater. But it appears in this case and the inference is quite strong that after she entered the theater for the purpose of taking her seat she was twice called to the box office and there informed that she must occupy another seat in the theater or leave it for the sole reason that she was a negress. This action on the part of the defendant's employees, as it seems to me, comes within the condemnation of the statute above quoted." Joyner v. Moore-Wiggins Co., (1912) 152 App. Div. 266, 136 N. Y. S. 578, affirmed (1914) 211 N. Y. 522.

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The proprietor of a theater is not liable where it is shown that he, personally, had not authorized the exclusion of the plaintiff, a negress, but that the plaintiff was excluded by an employee in violation of the rules of the theater, which customarily permitted negroes to enjoy accommodations therein. Thomas v. Williams, (1905) 48 Misc. 615 mem., 95 N. Y. S. 592.

**Exclusion from dancing pavilion.**— A dancing pavilion in an amusement park maintained by an electric railroad company to which an admission fee is charged is not a "place of public accommodation, resort or amusement," where no public exhibition of dancing is given, but those present personally participate, and a colored person who is refused admission, especially if he tenders no admission fee, is not deprived of any right accorded by section 40. Johnson v. Auburn, etc., Electric R. Co., 169 App. Div. 864, 156 N. Y. S. 93, wherein the court said: "The question, therefore, is whether this dancing room or pavilion was at the time plaintiff applied for admission a 'place of public accommodation, resort or amusement' within the intent and purpose of the statute. If at the time plaintiff applied for admission there had been in progress or about to be given a public exhibition of dancing furnished by defendant for the entertainment of those admitted to witness it, then I think the statute entitled plaintiff to be admitted as one of the audience. It was so held in reference to a skating rink in People v. King, 110 N. Y. 418, where a colored man sought admission to witness a public exhibition of skating. Plaintiff, however, did not seek admission in order to witness any public exhibition of dancing, but for the purpose of himself participating in the dancing. Was it the intent of the legislature by this statute to require the proprietor of every place where a public dance is being given to admit all persons who apply and are willing to pay the admission fee? A so-called public dance is usually a private enterprise conducted for the profit of its proprietor. It is a social meeting of the sexes for the pleasure derived from the society of those they know or whose acquaintance they there form as well as from the dancing. Its success depends largely upon bringing together people who are mutually congenial and who are willing to associate together for the time being for the pleasure they derive from each other's society and acquaintance as well as from dancing together or upon the same floor. If a proprietor of such a place may not exercise his judgment as to who to admit and who to exclude in order to secure the patronage necessary to success in such an enterprise, then it is manifest he cannot control the character of his place or its patronage. It would not be possible to regulate admission by rules applicable to all which would exclude persons of a certain degree of intoxication or condition of dress or cleanliness or standard of character or reputation in the community. It would seem, therefore, that such a business could not be carried on successfully unless the proprietor is able to discriminate according to his judgment as to persons, male and female, he is to admit to such an intimate association with each other. In none of the places of public accommodation, resort or amusement mentioned in the statute by name is there any such intimate association among the persons admitted as patrons or guests, and I think the specification of these places by name enables us to say with reasonable certainty that a dancing hall or room, which is not named, was not intended to be included under the more general words. It is not necessary to say that a place to come under the general words must in all cases be ejusdem generis of those afterward specially named, but I do say that to be covered by the general words a place not included in those afterward specially named should be one within the mischief to be remedied. In my opinion a dancing hall is not such a place; at least, it is not clear that it was so intended, and defendant should not be subjected to a penalty unless the right is clear. Moreover, if the statute can be so construed as to apply and cover this dancing pavilion, still I think plaintiff was not entitled to enforce the penalty because he did

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not tender the admission fee. This is a penal statute, and must be strictly construed in favor of defendant."

**Bootblacking stands.**— A bootblacking stand is not "a place of public accommodation" within the meaning and intent of this section. Burks v. Bosso, (1905) 180 N. Y. 341, 73 N. E. 58, 105 A. S. R. 762, reversing 81 App. Div. 530, 81 N. Y. S. 384.

**What constitutes hotel.**—A family hotel where the apartments are arranged in small suites differing in no essential respect from those in an ordinary apartment house, and where the apartments are rented upon annual leases and transient tenants are not solicited, is not a "hotel" within the meaning of this section. Alsberg v. Lucerne Hotel Co., (1905) 46 Misc. 617, 92 N. Y. S. 851.

**Saloons.**— A saloon is within the purview of this section as being "a place of public accommodation." "An analysis of the statute shows that it covers conveyances on land and water, all places of public accommodation, and all places of public amusement, and in addition thereto bathhouses and barber shops, which are sui generis, and not related to the other places enumerated. . . . Some of the places of public accommodation, to wit, inns, restaurants, hotels, eating houses, and some of the places of public amusement, to wit, theatres and music halls, are specifically mentioned; but the enumeration of these particular places does not exclude others. The statute says all other places of public accommodation, thereby enlarging its scope and not restricting it to those enumerated. All places in a similar or like category with those named are included within the terms of the statute." Babb v. Elsinger, (1914) 147 N. Y. S. 98.

**Restaurants and lunch rooms.**— This section is not violated by a restaurant keeper's refusal to serve plaintiff because he wore no collar, such refusal being based upon a reasonable ground and not because of race, color or creed. Brandt v. Mink, (1902) 38 Misc. 750, 78 N. Y. S. 1109.

**Refusal of guest by innkeeper.**— An innkeeper is liable under this section for refusal to allow a person the privileges of a guest. Cornell v. Huber, (1905) 102 App. Div. 293, 92 N. Y. S. 434.

**Refusal to exchange berth for state-room.**— The refusal by a steamboat company to exchange berths, bought by a negro, for state-rooms is not a discrimination because of race or color where it is shown that after his money was refunded he made no offer to pay for state-rooms. Miller v. New Jersey Steam-Boat Co., (1890) 58 Hun 424, 12 N. Y. S. 301, affirmed in (1892) 135 N. Y. 612, 32 N. E. 645.

**Discrimination against unnaturalized persons.**— Under L. 1895, ch. 1042, which applied only to citizens, a saloon keeper was held not liable for refusing to serve a negro because of his race and color, where it is shown that such negro was born in Africa and he made no proof that he had been naturalized. Fuller v. McDermott, (1904) 87 N. Y. S. 536.

**Cited.**—.This section was cited in People v. Rankin, (1915) 95 Misc. 62, 155 N. Y. S. 86.

**§ 41. Penalty for violation.**—Any person who shall violate any of the provisions of the foregoing section, or who shall aid or incite the violation of any of said provisions shall for each and every violation thereof be liable to a penalty of not less than one hundred dollars nor more than five hundred dollars, to be recovered by the person aggrieved thereby or by any resident of this state, to whom such person shall assign his cause of action, in any court of competent jurisdiction in the county in which the

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plaintiff or the defendant shall reside; and shall, also, for every such offense be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, or shall be imprisoned not less than thirty days nor more than ninety days, or both such fine and imprisonment.

Amended to read as above by L. 1913, ch. 265. The section before amendment read as follows: "Any person who shall violate any of the provisions of the foregoing section by denying to any citizens, except for reasons applicable alike to all citizens of every race, creed or color, and regardless of race, creed and color, the full enjoyment of any of the accommodations, advantages, facilities or privileges in said section enumerated, or by aiding or inciting such denial, shall for every such offense forfeit and pay a sum not less than one hundred dollars nor more than five hundred dollars to the person aggrieved thereby, to be recovered in any court of competent jurisdiction in the county where said offense was committed; and shall, also, for every such offense be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, or shall be imprisoned not less than thirty days nor more than ninety days, or both such fine and imprisonment."

The section as incorporated in the Consolidated Laws was section 2 of L. 1895, ch. 1042.

**Scope of former law.**— It seems that under the former section any person within the jurisdiction of this state might avail himself of the right of action given thereby; that the term "citizens" was not employed in further limitation of the status. Hubert v. Jose, (1912) 148 App. Div. 718, 132 N. Y. S. 811.

**Choice of remedy by party injured.**— A person, refused as a guest by an innkeeper, may maintain an action against the innkeeper on his common-law liability, and is not limited to bringing an action under this section. Cornell v. Huber, (1905) 102 App. Div. 293, 92 N. Y. S. 434.

**Measure of damages.**— Where the plaintiff, after purchasing a ticket which entitled her to admission to a bath house, was ejected by defendant's employees as the result of a dispute, damages may be awarded her for the indignity suffered and need not be limited to the price of the ticket. Aaron v. Ward, (1911) 203 N. Y. 351, 96 N. E. 736, 38 L. R. A. (N. S.) 204.

**Responsibility for acts of employees.**— Where it is shown that a waiter in the defendant's employ refused to serve the plaintiff because he was a negro, this gives the plaintiff a right of action against the defendant, unless the latter prove that the waiter did so in disobedience to orders given him. Hubert v. Jose, (1912) 148 App. Div. 718, 132 N. Y. S. 811.

Where negroes are excluded from a skating rink, because of their race and color, by the owner's employees but in accordance with his orders, he will be liable therefor. People v. King, (1888) 110 N. Y. 418, 18 N. E. 245, 6 A. S. R. 389, 1 L. R. A. 293.

A defendant is not liable in an action under this section where it is shown that he gave instructions to the waiter in his lunch room to serve colored persons as well as white, but that the waiter disobeyed these instructions and refused to serve a colored person. Hart v. Hartford Lunch Co., (1913) 81 Misc. 237, 142 N. Y. S. 515.

**Defense in action against restaurant keeper.**— In an action, under this section, by a colored woman against a restaurant keeper for refusal to serve her, it was held that a claim by the defendant that he was out of food at the time would not be allowed, where it was shown that other people in the

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restaurant were served shortly before and after the plaintiff applied. Wilson v. Razzetti, (1914) 88 Misc. 37, 150 N. Y. S. 145.

**Evidence.**— In an action to recover the statutory penalty for denial of access to the defendant's theater, the defendant should be allowed to introduce evidence to prove that he, personally, had not authorized the exclusion of the plaintiff, a negress, but had made rules to the contrary and customarily permitted negroes to enjoy the accommodations of his place of amusement. Thomas v. Williams, (1905) 48 Misc. 615, mem., 95 N. Y. S. 592.

## ARTICLE 5

### Right of Privacy

Section 50. Right of privacy.
51. Action for injunction and for damages.

**§ 50. Right of privacy.**—A person, firm or corporation that uses for advertising purposes, or for the purposes of trade, the name, portrait or picture of any living person without having first obtained the written consent of such person, or if a minor of his or her parent or guardian, is guilty of a misdemeanor.

This was formerly section 1 of L. 1903, ch. 132.

*Penal Law*, § 515, provides for the "return of photographs of prisoners after unsuccessful prosecution of criminal action."

*Right of privacy:* see 2 Ann. Cas. 574, 18 Ann. Cas. 1917, 31 L. R. A. 283, *Constitutional liberty of speech and press as authorizing invasion of right of privacy:* see 15 Ann. Cas. 5. *Publication of photograph:* see 35 L. R. A. (N. S.) 565, 34 L. R. A. (N. S.) 1137.

**§ 51. Action for injunction and for damages.**—Any person whose name, portrait or picture is used within this state for advertising purposes or for the purposes of trade without the written consent first obtained as above provided may maintain an equitable action in the supreme court of this state against the person, firm or corporation so using his name, portrait or picture, to prevent and restrain the use thereof; and may also sue and recover damages for any injuries sustained by reason of such use and if the defendant shall have knowingly used such person's name, portrait or picture in such manner as is forbidden or declared to be unlawful by the last section, the jury, in its discretion, may award exemplary damages. But nothing contained in this act shall be so construed as to prevent any person, firm or corporation, practicing the profession of photography, from exhibiting in or about his or its establishment specimens of the work of such establishment,

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unless the same is continued by such person, firm or corporation after written notice objecting thereto has been given by the person portrayed.

All but the last sentence of this section was formerly section 2 of L. 1903, ch. 132. The last sentence was added by L. 1911, ch. 226.

**Constitutionality.**— This section is not unconstitutional either as denying persons equal protection of the law, or as depriving persons of liberty or property without due process of law, or as impairing the obligations of contracts, or as requiring the written consent of parents or guardian before using portraits of infants. Wyatt v. McCreery, (1908) 126 App. Div. 650, 11 N. Y. S. 86, affirming 58 Misc. 429, 110 N. Y. S. 900. The right of action given by this section does not violate either the state or federal constitution. It deprives persons of neither liberty nor property, nor does it impair the obligations of contracts. "It is to be observed that the statute does not deny the right of any person to make such use of his own portrait as he may see fit. The legislature has not undertaken to restrict his liberty in this respect to any extent whatever. It is only the use of his name or picture by others and by others for particular purposes that is affected by the statute. Unless we are bound to assume that there is an inherent right in the public at large to use the names and portraits of others for advertising or trade purposes without their consent, the legislative restriction of their liberty imposed by this act is not an exercise of power which affords the basis of any valid objection in a court of justice. The statute merely recognizes and enforces the right of a person to control the use of his name or portrait by others so far as advertising or trade purposes are concerned. This right of control in the person whose name or picture is sought to be used for such purposes is not limited by the statute." Rhodes v. Sperry, etc., Co., (1908) 193 N. Y. 223, 85 N. E. 1097, 127 A. S. R. 945, 34 L. R. A. (N. S.) 1143, affirming 120 App. Div. 896, 105 N. Y. S. 1140, and affirmed in (1910) 220 U. S. 502, 31 S. Ct. 490, 55 U. S. (L. ed.) 561.

**Liability at common law for use of portrait.**— A plaintiff whose picture is used, without her consent, in an advertisement has no right of action, in the absence of statute, for violation of her right of privacy. "An examination of the authorities leads us to the conclusion that the so-called 'right of privacy' has not as yet found an abiding place in our jurisprudence, and, as we view it, the doctrine cannot now be incorporated without doing violence to settled principles of law by which the profession and the public have long been guided." Robertson v. Rochester Folding-Box Co., (1902) 171 N. Y. 538, 64 N. E. 442, 8 A. S. R. 828, 59 L. R. A. 478, reversing 64 App. Div. 30, 71 N. Y. S. 876. But see chapter 132, Laws 1913, and cases thereon.

**Use of portrait in single issue of newspaper.**— The use, by a newspaper, of the name and portrait of the plaintiff in a single issue, and not continuously for purposes of trade or advertising, is not prohibited by this section. Moser v. Press Pub. Co., (1908) 59 Misc. 78, 109 N. Y. S. 963.

**Reproduction and sale of photograph.**— It is not a violation of this section for a person who has had her photograph taken to authorize persons other than the photographer to reproduce and market copies thereof, as in such cases the customer is the exclusive owner of all proprietary rights in such picture. "It is settled law that the ordinary contract between a photographer and his customers is a contract of employment. The conception as well as the production of the photograph is work done for the customers and they, not their employee, are the exclusive owners of all proprietary rights." White Studio v. Dreyfoos, (1913) 156 App. Div. 762, 142 N. Y. S. 37.

**Use of name or picture for advertising purposes generally.**— Where a portrait of the plaintiff is used without her consent in connection with an

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advertisement in a magazine, it is a violation of this section and the plaintiff may enjoin such use and also sue for damages. Riddle v. MacFadden, (1911) 201 N. Y. 215, 94 N. E. 644, 116 App. Div. 353, 101 N. Y. S. 606. An injunction will be granted to restrain a railway company from using a picture of the plaintiff and her child, where it is shown that such picture is used for the purpose of showing the defendant's passengers how to enter and alight from its cars. Almind v. Sea Beach R. Co., (1913) 157 App. Div. 230, 141 N. Y. S. 842, reversing 78 Misc. 445, 139 N. Y. S. 559. An actress has no right of action under this section for the publication of her portrait in a weekly magazine, where such portrait is not used for advertising purposes, merely because the magazine contains a number of advertisements. Colyer v. Richard K. Fox Pub. Co., (1914) 162 App. Div. 297, 146 N. Y. S. 999. The use of the plaintiff's name, as an incidental part of a photograph taken of his factory, but not for purposes of trade, does not give rise to a right of action under this section. "The use of the plaintiff's name in this case is not for the purpose of obtaining trade or advertisement; apparently it merely appears in the picture because it was placed upon the building which is a part of the picture. Certainly where a man places his sign upon the outside of a building he cannot claim that a person who would otherwise have a right to photograph the building is precluded from using that picture because the sign also appears on the picture. To constitute a violation of the Civil Rights Law I think it must appear that the use of the plaintiff's picture or name is itself for the purpose of trade, not merely an incidental part of a photograph of an actual building, which cannot be presumed to add to the value of the photograph for trade or advertising, and even a use that may in a particular instance cause acute annoyance cannot give rise to an action under the statute unless it fairly falls within the terms of the statute." Merle v. Sociological Research Film Corp., (1915) 166 App. Div. 376, 152 N. Y. S. 829.

**Use for moving pictures.**— The use, by a manufacturer of films for moving pictures, of the plaintiff's name and picture, without his consent, in a series of moving pictures prepared for public exhibition and purporting to be a representation of an occurrence in which the plaintiff had taken part, and also the use of the plaintiff's name and picture in connection with advertisements of such moving picture, are violations of this section. Binns v. Vitagraph Co. of America, (1913) 210 N. Y. 51, 103 N. E. 1108, Ann. Cas. 1915B 1024, L. R. A. 1915C 839, affirming (1911) 147 App. Div. 783, 132 N. Y. S. 237, reversing (1911) 71 Misc. 203, 130 N. Y. S. 876, reversing (1910) 67 Misc. 327, 124 N. Y. S. 515.

**Use of picture in autobiography.**— The use of the picture of the plaintiff in connection with an autobiography is not a violation of this section as being the use of plaintiff's picture in an advertisement or for the purposes of trade, where the publication is for the dissemination of knowledge, and not for trade purposes. Jeffries v. New York Evening Journal Pub. Co., (1910) 67 Misc. 570, 124 N. Y. Supp. 780.

**Use of author's name.**— The use of the name of the plaintiff, a noted educator and writer, without his consent by booksellers in advertising an edition of standard works as being of his selection, is a violation of this section. Eliot v. Jones, (1910) 66 Misc. 95, 120 N. Y. S. 989. The right of publishers to publish certain books with the nom de plume of the author includes the right to publish the author's true name upon the title page or elsewhere, and is not a violation of this section. "In the case at bar," said the court, "the defendants concededly had the right to publish the books in suit with the nom de plume of plaintiff, and this right carried with it the right to state the true name of the author in such form in the book, either upon the title page or otherwise, as to show who was the writer or author thereof." Ellis v. Hurst, (1910) 70 Misc. 122, 128 N. Y. S. 144, reversing 66 Misc. 235, 121 N. Y. S. 438.

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The publication, by the defendant, of a sensational article, written in the first person and attributing the authorship thereof to the plaintiff, a noted traveler and writer, is a use of the plaintiff's name "for advertising purposes or for purposes of trade" and a violation of this section. D'Altomonte v. New York Herald Co., (1913) 154 App. Div. 453, 139 N. Y. S. 200.

**Estoppel.**— The use of a photograph of the plaintiff in an advertisement of the defendant's business is not a violation of this section where it appears that the plaintiff, while in the defendant's employ, voluntarily posed for such photograph for the purpose of its being used in such advertisement. "The statute was intended to prevent the unauthorized use of another's portrait for advertising purposes or purposes of trade, and made the written consent of the person whose portrait was used for such purposes evidence of that authority; but it never was meant that an employee could fraudulently, or by his culpable negligence amounting to constructive fraud, mislead his employer into expenditures to build up his trade and thereafter claim the intervention of a court of equity where such intervention would visit a material injury upon the employer." Wendell v. Conduit Mach. Co., (1911) 74 Misc. 201, 133 N. Y. S. 758.

A person is not entitled to bring an action under this section for the use of his name by another for purposes of trade, where, having conducted a business in his own name, he assigned and transferred to a corporation all his right, title and interest in and to the business, including the stock on hand and good will. In such a case, "it is perfectly plain that the plaintiff is not entitled to the benefit of the provisions of the statute, for by his own voluntary act he has given the defendant his name and the right to use it." White v. White, (1914) 160 App. Div. 709, 145 N. Y. S. 743.

**Joinder of actions.**— Where a plaintiff brings suit against a photographer and magazine editor for the use of her portrait, without her consent, in connection with an advertisement, an action at law for damages and a suit in equity to restrain such use may be joined in one complaint, as they arose out of the same transaction. Such an action, where, in addition to the demand for equitable relief, a demand is made for money damages, is one for personal injury under subdivision 2 of section 191 of the Code of Civil Procedure and no appeal lies thereon except as provided in such section. Riddle v. MacFadden, (1911) 201 N. Y. 215, 94 N. E. 644, 116 App. Div. 353, 101 N. Y. S. 606.

An action for libel and one under this section may be joined, as arising out of the same transaction. D'Altomonte v. New York Herald Co., (1913) 154 App. Div. 453, 139 N. Y. S. 200.

**Pleading.**— In an action under this section "the plaintiff must, by pleading and proof, bring the action within the terms and conditions of the statute. He must, therefore, plead and prove that the defendant is making use of his name or picture for advertising or business purposes without having first procured the written consent of the plaintiff to make such use of the same," but the plaintiff should not be required to reply to a separate defense by way of avoidance, alleging that the plaintiff gave a written consent to the use of his portrait for advertising purposes, for such defense does not avoid the plaintiff's right of action, but, if proved, takes from him his cause of action altogether. Porter v. American Tobacco Co., (1910) 140 App. Div. 871, 125 N. Y. S. 710. A complaint stating that the defendant, while engaged in the business of publishing and selling photographs and portraits in the city of New York, offered the plaintiff's photograph for sale and used it for purposes of trade without her consent, makes sufficient allegation that the acts complained of were committed in this state, and states a sufficient cause of action under this section. Kunz v. Bosselman, (1909) 131 App. Div. 288, 115 N. Y. S. 650.

**Abatement of action by death of plaintiff.**— The right of action given by this section is a personal one, and upon the death of the plaintiff does not

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survive to his executor or administrator. "The right of privacy or, as it has sometimes been called, the 'right to be let alone' is in its nature personal. The peculiarly personal character of the cause of action created by the statute negative the idea that the legislature intended that it should be enforceable by the personal representatives of the person in whose favor the cause of action existed. The injury done by the violation of the right does not affect the estate of the person injured, but is strictly an injury to the person of the plaintiff. Nor does the fact that upon the violation of the right the person injured becomes entitled to damages alter the nature of the right to change the character of the cause of action which the statute sanctions." Wyatt v. Hall's Portrait Studio, (1911) 71 Misc. 199, 128 N. Y. S. 247.

## ARTICLE 6

### Laws Repealed; When to Take Effect

Section 60. Laws repealed.
61. When to take effect.

**§ 60. Laws repealed.**— Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

**§ 61. When to take effect.**—This chapter shall take effect immediately.

### Schedule of Laws Repealed.

| | | | |
|---|---|---|---|
| Revised Statutes.... | Part 1, | chapter 4, | .... All |
| Revised Statutes.... | Part 1, | chapter 20, title 7 | .... All |

| Laws of | Chapter | Section |
|---|---|---|
| 1785..... | 68..... | 6–10 |
| 1787..... | 1..... | All |
| 1787..... | 2..... | All |
| 1788..... | 40..... | All |
| 1788..... | 46..... | 36 |
| 1790..... | 28..... | All |
| 1798..... | 27..... | All |
| 1799..... | 62..... | All |
| 1801..... | 188..... | All |
| 1804..... | 40..... | All |
| 1807..... | 77..... | All |
| 1809..... | 44..... | 2, 3 |
| 1810..... | 115..... | All |
| 1810..... | 193..... | 23, 24 |

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Notes to Schedule of Repeals

| Laws of | Chapter | Section |
|---|---|---|
| R. L. 1813 | 88 | All |
| 1813 | 203 | 29 |
| 1817 | 137 | All |
| 1819 | 141 | All |
| 1828 | 21 | 1, ¶¶ 1, 6, 280 (2d Meet.) |
| 1841 | 247 | All |
| 1869 | 802 | All |
| 1873 | 186 | All |
| 1881 | 400 | All |
| 1883 | 36 | All |
| 1895 | 927 | All |
| 1895 | 1042 | All |
| 1903 | 132 | All |
| 1907 | 593 | All |

Code Civil Procedure, §§ 15, 16, 119, 548, 565, 860, 863, 864; 1190, second sentence; 1192

## NOTES TO SCHEDULE OF REPEALS

*Prepared by the Board of Statutory Consolidation and printed in their report of* 1907 *at pages* 441, 442.

**R. S., Pt. 1, Ch. 4.**—Sections 7–10, 12, 13, 17, 19–21 are omitted as covered by the state or national constitution. It has not been deemed necessary to reiterate these provisions in this chapter. The balance of the chapter has been incorporated in the Civil Rights Law. * * *

**L. 1778, Ch. 1.**—Relates to ratification of articles of the confederation. Obsolete.

**L. 1779, Ch. 30.**—Authorizes delegates to ratify articles of confederation. Obsolete.

**L. 1801, Ch. 193.**—Repeals "all acts and parts of acts heretofore passed by the legislature of this state which come within the purview or operation of any of the acts of the legislature, commonly called the revised acts." Statute noted as repealed comes within the purview of L. 1801, Ch. 188, and is thus repealed by L. 1801, Ch. 193.

**L. 1813, Ch. 202.**—Repeals "all acts and parts of acts heretofore passed by the legislature of this state which come within the purview or operation of any of the acts passed during the present



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session of the legislature commonly called the revised acts." Statute noted as repealed comes within the purview of 2 R. L., 1813, Ch. 88, and is thus repealed by L. 1813, Ch. 202.

**L. 1788, Ch. 46, § 36.**— Statute noted as repealed comes within the purview of L. 1801, Ch. 90, § 28, and is repealed by L. 1801, Ch. 193. See preceding note.

**L. 1841, Ch. 247.**—This statute is a repealing act and since the repeal has been inserted in the schedule of the Civil Rights Law, the repealing act is recommended for repeal.

**L. 1873, Ch. 186.**— Sections 1–3 have been repealed. Section 4, " This act shall take effect immediately," is obsolete.

**L. 1881, Ch. 400.**— Sections 1 and 2 have been repealed. Section 3, " This act shall take effect immediately," is obsolete.

**L. 1883, Ch. 36.**— See note 42 [L. 1841, Ch. 247, supra].

**L. 1895, Ch. 1042.**— Consolidated in Civil Rights Law, §§ 14, 40, 41.

**L. 1903, Ch. 132.**— Consolidated in Civil Rights Law, §§ 50, 51.

**L. 1907, Ch. 593.**— The repeal made by this act has been inserted in the schedule of repeals of Civil Rights Law.

**Code Civil Procedure, § 15.**— Consolidated in Civil Rights Law, § 110.

**Code Civil Procedure, § 16.**— Consolidated in Civil Rights Law, § 20.

**Code Civil Procedure, § 119.**— Consolidated in Civil Rights Law, § 22.

**Code Civil Procedure, § 548.**— Consolidated in Civil Rights Law, § 23.

**Code Civil Procedure, § 564,** except first sentence; third sentence, to and including words " to the discharge," and fourth sentence. Consolidated in Civil Rights Law, § 24.

**Code Civil Procedure, § 565.**— Consolidated in Civil Rights Law, § 25.

**Code Civil Procedure, § 860.**— Consolidated in Civil Rights Law, § 26.

**Code Civil Procedure, § 863,** except so far as relates to contempt of court. Consolidated in Civil Rights Law, §§ 26, 27.

**Code Civil Procedure, § 864.**— Consolidated in Civil Rights Law, § 27.

**Code Civil Procedure, § 1190,** second sentence. Consolidated in Civil Rights Law, § 36.

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# INDEX TO CIVIL RIGHTS LAW

*[References are to sections]*


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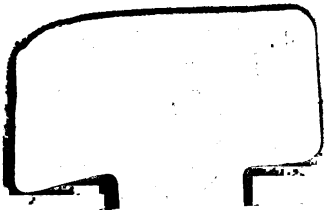

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